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Montana Special Education Reference Manual

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State Superintendent

The Office of Public Instruction

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A Message from the Montana Superintendent of Public Instruction

Enclosed is a copy of Montana's Special Education Reference Manual. This manual contains administrative rules of Montana (ARM) and Montana statutes which relate to the conduct of special education services. The newly revised administrative rules in this document represent the collaborative efforts of advocacy groups, professional organizations, parents, the Board of Public Education and the Office of Public Instruction in developing rules which are consistent with federal regulations, are user friendly, and which address our values in providing services to our children with disabilities.

The manual includes a chapter on finance. The administrative rules in this chapter will see significant modification or repeal in the near future to accommodate the revisions recommended by the Commission on Special Education Finance. Replacement pages will be provided to recipients for the manual following final adoption.

We are committed to providing a free appropriate public education to our children with disabilities. This document should assist teachers and administrators in addressing the special education needs of our students with disabilities, as well as to ensure that the education provided is free and appropriate.

Sincerely,

Nancy Keenan

PART I

PREFACE

This manual replaces the "Special Education Reference Manual: Montana Laws and Rules," dated December 1983 and its subsequent revisions.

Special education within the state receives its guidance from federal laws and regulations, Montana laws and administrative rules, and policy developed by the Board of Public Education and Division of Special Education, Office of Public Instruction.

This manual was prepared for the purpose of consolidating the part of the Montana School Laws pertaining to special education, their implementing Administrative Rules of Montana and federal law's implementing regulations into one document. The sequence of the laws and rules has been changed from the order in the original sources so that agencies will have a functional reference manual. This manual does NOT contain the exact language of the laws and rules. Changes in word usage (e.g., handicapped to disabilities), punctuation, capitalization, and other editing changes have been made. Specific reference citations which accompany each law and rule enable the reader to refer to the original source for exact language.

References to the laws and rules are shown after each topic heading. Code of Federal Regulations (CFR) are indicated by 34 CFR 300.__. Montana Codes Annotated (MCA) are indicated by 20-7-_ and Administrative Rules of Montana (ARM) by 10._.__.

Additional Resources

Individuals With Disabilities Education Act (IDEA), P.L. 101-476 as amended. A copy of the federal law for special education, the Individuals With Disabilities Education Act (IDEA), P.L. 101-476 as amended, is available from the Division of Special Education, Office of Public Instruction.

Section 504; Guidelines for Educators. A copy of the federal regulations for addressing discrimination under Section 504 of the 1973 Rehabilitation Act is available from the Office of Public Instruction.

Americans With Disabilities Act. Information about the federal requirements for schools is available from the Office of Public Instruction.

ACKNOWLEDGMENTS

The Office of Public Instruction (OPI) acknowledges the contributions of the Montana Special Education Advisory Council, Montana Council of Administrators of Special Education (MCASE), Montana Advocacy Program (MAP), Board of Public Education, Parents, Let's Unite for Kids (PLUK), and School Administrators of Montana (SAM). Representatives from these organizations participated in numerous task force meetings for the purpose of reviewing and proposing revisions to the Montana Special Education Rules.

This manual is developed under the guidance and direction of the Division of Special Education of the Office of Public Instruction. Sue Paulson of the Division of Legal Services coordinated the entire process. Specific thanks are extended to individual task force members: Joan Baker, Special Education Director, Hamilton School District; Mary Ann Brown, Gallatin County Superintendent; Pat Conant, Parent Representative, Parents, Let's Unite for Kids; Pete Donovan, Secretary to Certification Practices and Advisory Council of the Board of Public Education; Judy Gosnell-Lamb, Director, Big Sky Special Education Cooperative; Andree LaRose, Staff Attorney, Montana Advocacy Program; William Robinson, Principal, Martha Fox Heck School, Belgrade; Jack Rudio, Consultant, Mountain Plains Regional Resource Center.

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49-2-307. Discrimination in education. It is an unlawful discriminatory practice for an educational institution:

(1) to exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, conditions, or privileges of the institution because of race, creed, religion, sex, marital status, color, age, physical disability, or national origin or because of mental disability, unless based on reasonable grounds;

(2) to make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information or to make or keep a record concerning the race, color, sex, marital status, age, creed, religion, physical or mental disability, or national origin of an applicant for admission, except as permitted by regulations of the commission;

(3) to print, publish, or cause to be printed or published a catalog or other notice or advertisement indicating a limitation, specification, or discrimination based on the race, color, creed, religion, age, physical or mental disability, sex, marital status, or national origin of an applicant for admission; or

(4) to announce or follow a policy of denial or limitation of educational opportunities of a group or its members, through a quota or otherwise, because of race, color, sex, marital status, age, creed, religion, physical or mental disability, or national origin.

DEFINITIONS

20-7-401. Definitions. In this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

(2) "Assistive technology service" means any service that directly assists a child with disabilities in the selection, acquisition, or use of an assistive technology device. The term includes:

(a) the evaluation of the needs of a child with disabilities, including a functional evaluation of the child in the child's customary environment;

(b) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by a child with disabilities;

(c) selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing an assistive technology device;

(d) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) training or technical assistance for a child with disabilities or, if appropriate, training or technical assistance for that child's family; and

(f) training or technical assistance for professionals, including individuals providing education or rehabilitation services, for employers, or for other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities.

(3) "Autism" means a developmental disability that significantly affects verbal and nonverbal communication and social interaction, that is generally evident before 3 years of age, and that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environment change or to change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance.

(4) "Child with disabilities" means a child evaluated in accordance with the regulations of the Individuals With Disabilities Education Act as having cognitive delay; hearing impairment, including deafness; speech or language impairment; visual impairment, including blindness; emotional disturbance; orthopedic impairment; autism; traumatic brain injury; other health impairments; deaf-blindness; multiple disabilities; or specific learning disabilities and who be-

cause of those impairments needs special education and related services. A child who is 5 years of age or younger may be identified as a child with disabilities without the specific disabilities being specified.

(5) "Cognitive delay" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

(6) "Deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication problems and other developmental and educational problems that the problems cannot be accommodated in special education programs solely for children with deafness or for children with blindness.

(7) "Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, in a manner that adversely affects the child's educational performance.

(8) "Emotional disturbance" means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time that adversely affects educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. The term includes schizophrenia. The term does not include social maladjustment, unless it is determined that the child is emotionally disturbed.

(9) "Free appropriate public education" means special education and related services that:

(a) are provided at public expense under public supervision and direction and without charge;

(b) meet the accreditation standards of the board of public education, the special education requirements of the superintendent of public instruction, and the requirements of the Individuals With Disabilities Education Act;

(c) include preschool, elementary school, and high school education in Montana; and

(d) are provided in conformity with an individualized education program that meets the requirements of the Individuals With Disabilities Education Act.

(10) "Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included within the definition of deafness.

(11) "Orthopedic impairment" means a severe orthopedic disability that adversely affects a child's educational performance. The term includes but is not limited to impairment caused by congenital anomaly (e.g., clubfoot or absence of some member), impairments caused by disease (e.g., poliomyelitis or bone tuberculosis), and impairments from other causes (e.g., fractures or burns that cause contractures, amputation, cerebral palsy).

(12) "Other health impairment" means limited strength, vitality, or alertness due to chronic or acute health problems, such as a heart condition, tuberculosis, rheumatic fever, nephritis,

asthma, sickle-cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, that adversely affects a child's educational performance.

(13) "Related services" means transportation and any developmental, corrective, and other supportive services that are required to assist a child with disabilities to benefit from special education and includes speech-language pathology, audiology, occupational therapy, physical therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parental counseling and training.

(14) "Special education" means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a child with disabilities, including but not limited to instruction conducted in a classroom, home, hospital, institution, or other setting and instruction in physical education.

(15) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes but is not limited to such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems that are primarily the result of visual , hearing, or motor handicaps; cognitive delay; or environmental, cultural, or economic disadvantages.

(16) "Speech-language impairment" means a communication disorder, such as stuttering, impaired articulation, or a language or voice impairment, that adversely affects a child's interpersonal relationships or educational performance.

(17) "Surrogate parent" means an individual appointed to safeguard a child's rights and protect the child's interests in educational evaluation, placement, and hearing or appeal procedures concerning the child.

(18) "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term does not apply to brain injuries that are congenital or degenerative or to brain injuries that are induced by birth trauma.

(19) "Visual impairment" means an impairment that, after correction, adversely affects a child's educational performance. The term includes both partial blindness and blindness. (History: En. 75-7801 by Sec. 419, Ch 5, L. 1971; AMD. Sec. 1, Ch. 93, L. 1974; AMD. Sec. 27, Ch. 266, L. 1977; AMD. Sec. 1, Ch. 529, L. 1977; R.C.M. 1947, 75-7801; AMD. Sec.1, Ch. 311, L. 1961; AMD. Sec 1, Ch. 461, L. 1983; AMD. Sec. 1, Ch. 560, L. 1985; AMD. Sec. 1, Ch. 618, L. 1985; AMD. Sec 6, Ch. 413, L. 1989; AMD. Sec. 19, Ch. 16, L. 1991; AMD. Sec. 3, Ch. 249, L. 1991; AMD. Sec. 1, Ch. 356, L. 1993.)

10.16.214—Special Education Definitions

(1) The following definitions apply to the special education rules:

(a) Consent: incorporate by reference 34 Code of Federal Regulations (CFR) 300.500(a).

(b) Evaluation: incorporate by reference 34 CFR 300.500(b).

(c) Personally identifiable: incorporate by reference 34 CFR 300.500(c).

(d) Day: refers to calendar days unless otherwise designated in rule.

(e) Individualized education program (IEP): incorporate by reference 34 CFR 300.340.

(f) Local educational agency (LEA): the local public school district or the state agency authorized to provide education to residents of a state-operated facility.

(g) Native language: when used with reference to a person of limited English-speaking ability, means the language normally used by that person, or in the case of a child, the language normally used by the parents of the child.

(h) Parent: means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with 34 CFR 300.514. The term does not include the state if the child is a ward of the state. The term parent is defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare.

(i) Public agency: includes the state educational agency, local educational agencies, intermediate educational units, and any other political subdivisions of the state which are responsible for providing education to children with disabilities.

(j) Private school student: incorporate by reference 34 CFR 300.450.

(k) Qualified: means that a person has met OPI-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which he or she is providing special education or related services.

(l) Related services: incorporate by reference 34 CFR 300.16.

(m) State education agency: the office of public instruction.

(n) Special education: incorporate by reference 34 CFR 300.17.

(o) Transition services: Incorporate by reference 34 CFR 300.18. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

34 CFR 300.16—Related services

(a) As used in this part, the term "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disabil-

ity to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(b) The terms used in this definition are defined as follows:

(1) "Audiology" includes—

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of pupils, parents, and teachers regarding hearing loss; and

(vi) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) "Early identification and assessment of disabilities in children" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) "Medical services" means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(5) "Occupational therapy" includes—

(i) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

(ii) Improving ability to perform tasks for independent functioning when functions are impaired or lost; and

(iii) Preventing, through early intervention, initial or further impairment or loss of function.

(6) "Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development.

(7) "Physical therapy" means services provided by a qualified physical therapist.

(8) "Psychological services" includes—

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents.

(9) "Recreation" includes—

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(10) "Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

(11) "School health services" means services provided by a qualified school nurse or other qualified person.

(12) "Social work services in schools" includes—

(i) Preparing a social or developmental history on a child with a disability;

(ii) Group and individual counseling with the child and family;

(iii) Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; and

(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program.

(13) "Speech pathology" includes—

(i) Identification of children with speech or language impairments;

(ii) Diagnosis and appraisal of specific speech or language impairments;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(14) "Transportation" includes—

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings; and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(Authority: 20 U.S.C. 1401(a)(17))

Note: With respect to related services, the Senate Report states:

The Committee bill provides a definition of related services, making clear that all such related services may not be required for each individual child and that such term includes early identification and assessment of handicapping conditions and the provision of services to minimize the effects of such conditions.

(S. Rep. No. 94-168, p.12 (1975))

The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music, and dance therapy), if they are required to assist a child with a disability to benefit from special education.

There are certain kinds of services that might be provided by persons from varying professional backgrounds and with a variety of operational titles, depending upon requirements in individual States. For example, counseling services might be provided by social workers, psychologists, or guidance counselors, and psychological testing might be done by qualified psychological examiners, psychometrists, or psychologists, depending upon State standards.

Each related service defined under this part may include appropriate administrative and supervisory activities that are necessary for program planning, management, and evaluation.

34 CFR 300.17—Special education

(a) (1) As used in this part, the term "special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(ii) Instruction in physical education.

(2) The term includes speech pathology, or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, and is considered special education rather than a related service under State standards.

(3) The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

(b) The terms in this definition are defined as follows:

(1) "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

(2) "Physical education" is defined as follows:

(i) The term means the development of—

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

(ii) The term includes special physical education, adaptive physical education, movement education, and motor development.

(Authority: 20 U.S.C. 1401(a)(16))

(3) "Vocational education" means organized educational programs offering a sequence of courses that are directly related to the preparation of individuals in paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advanced degree. Such programs shall include competency-based applied learning that contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupation-specific skills necessary for economic independence as a productive and contributing member of society. Such term also includes applied technology education.

(Authority: 20 U.S.C. 1401(16))

Note 1: The definition of special education is a particularly important one under these regulations, since a child does not have a disability under this part unless he or she needs special education. (See the definition of children with disabilities in §300.7.) The definition of related services (§300.16) also depends on this definition, since a related service must be necessary for a child to benefit from special education. Therefore, if a child does not need special education, there can be no related services, and the child is not a child with a disability and is, therefore, not covered under the Act.

Note 2: The above definition of vocational education is taken from the Carl D. Perkins Vocational and Applied Technology Education Act (Pub. L. 98-524, as amended by Pub. L. 101-392). Section 118(a)(3)(A)-(B) of this statute further provides—

Vocational education programs and activities for individuals with handicaps will be provided in the least restrictive environment in accordance with Section 612(5)(B) of the Individuals with Disabilities Education Act and will, whenever appropriate, be included as a component of the individualized education program developed under Section 614(a)(5) of such Act. Students with handicaps who have individualized education programs developed under section 614(a)(5) of the Individuals with Disabilities Education Act shall, with respect to vocational education programs, be afforded the rights and protections guaranteed such students under Sections 612, 614, and 615 of such Act.

34 CFR 300.18—Transition services

(a) As used in this part, "transition services" means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

(b) The coordinated set of activities described in paragraph (a) of this section must—

(1) Be based on the individual student's needs, taking into account the student's preferences and interests; and

(2) Include needed activities in the areas of—

(i) Instruction;

(ii) Community experiences;

(iii) The development of employment and other post-school adult living objectives; and

(iv) If appropriate, acquisition of daily living skills and functional vocational evaluation.

(Authority: 20 U.S.C. 1401(a)(19))

Note: Transition services for students with disabilities may be special education, if they are provided as specially designed instruction, or related services, if they are required to assist a student with a disability to benefit from special education. The list of activities in paragraph (b) is not intended to be exhaustive.

34 CFR 300.340—Definitions

(a) As used in this part, the term "individualized education program" means a written statement for a child with a disability that is developed and implemented in accordance with §§300.341-300.350.

(b) As used in §§300.346 and 300.347, "participating agency" means a State or local agency, other than the public agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student.

(Authority: 20 U.S.C. 1401(a)(20))

34 CFR 300.450—Definition of "private school children with disabilities"

As used in this part, "private school children with disabilities" means children with disabilities enrolled by their parents in private schools or facilities other than children with disabilities covered under §§300.400-300.402.

(Authority: 20 U.S.C. 1413(a)(4)(A))

34 CFR 300-500—Definition of "consent," "evaluation," and "personally identifiable"

(a) As used in this part: "Consent" means that—

(1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(2) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(b) "Evaluation" means procedures used in accordance with §§300.530-300.534 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class.

(c) "Personally identifiable" means that information includes—

(1) The name of the child, the child's parent, or other family member;

(2) The address of the child;

(3) A personal identifier, such as the child's social security number or student number; or

(4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(Authority: 20 U.S.C. 1415, 1417(c))

34 CFR 300.560—Records Definitions

As used in §§300.560-300.576—

Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

Education records means the type of records covered under the definition of education records in part 99 of this title (the regulations implementing the Family Educational Rights and Privacy Act of 1974).

Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under this part.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

PART II

OFFICE OF PUBLIC INSTRUCTION RESPONSIBILITY FOR SPECIAL EDUCATION

Montana Statutes for Special Education

20-7-402. Special education to comply with board policies. (1) The conduct of special education programs shall comply with the policies recommended by the superintendent of public instruction and adopted by the board of public education. These policies shall assure and include but are not limited to:

(a) placement of children with disabilities in the least restrictive alternative setting;

(b) due process for all children with disabilities, including the appointment of a surrogate parent if necessary;

(c) use of child study teams to identify children with disabilities and use of instructional teams to plan individual education programs;

(d) comprehensive evaluation for each child with disabilities; and

(e) other policies needed to assure a free and appropriate public education.

(2) The superintendent of public instruction shall promulgate rules to administer the policies of the board of public education. (History: En. 75-7802 by Sec. 420 Ch. 5, L. 1971; AMD Sec. 2, Ch. 539, L. 1977; R.C.M. 1947, 75-7802; AMD. Sec. 2, Ch. 618, L. 1985; AMD. Sec. 10, Ch. 249, L. 1991.)

20-7-403. Duties of superintendent of public instruction. The superintendent of public instruction shall supervise and coordinate the conduct of special education in the state by:

(1) recommending to the board of public education adoption of those policies necessary to establish a planned and coordinated program of special education in the state;

(2) administering the policies adopted by the board of public education;

(3) certifying special education teachers on the basis of the special qualifications for the teachers as prescribed by the board of public education;

(4) establishing procedures to be used by school district personnel in identifying children with disabilities;

(5) recommending to districts the type of special education class or program needed to serve the children with disabilities of the districts and preparing appropriate guides for developing individualized education programs;

(6) seeking for local districts appropriate interdisciplinary assistance from public and private agencies in diagnosing the special education needs of children, in planning programs, and in admitting and discharging children from those programs;

(7) assisting local school districts, institutions, and other agencies in developing full-service programs for all children with disabilities;

(8) approving, as they are proposed and annually after approval, those special education classes or programs that comply with the laws of the state of Montana, policies of the board of public education, and the regulations of the superintendent of public instruction;

(9) providing technical assistance to district superintendents, principals, teachers, and trustees;

(10) conducting conferences, offering advice, and otherwise cooperating with parents and other interested persons;

(11) ensuring appropriate training and instructional material for persons appointed as surrogate parents that outlines their duties toward the child, limitations on what they may do for the child, duties in relation to the child's records, sources of assistance available to the surrogate parent, and the need to seek competent legal assistance in implementing hearing or appeal procedures;

(12) ensuring that the requirements of the Individuals With Disabilities Education Act are met and that each educational program for children with disabilities administered within the state, including each program administered by any other agency, is under the general supervision of the superintendent of public instruction, meets the education standards of the board of public education, and meets the requirements of the superintendent of public instruction, reserving to the other agencies and political subdivisions their full responsibilities for other aspects of the care of children needing special education or for providing or paying for some or all of the costs of a free appropriate public education to children with disabilities within the state;

(13) contracting for the delivery of audiological services to those children allowed by Montana law in accordance with policies of the board of public education; and

(14) contracting with a public school district or a private residential facility for the provision of a free appropriate public education for a child when a state agency places a child with disabilities who is in need of special education in:

(a) an in-state residential facility or children's psychiatric hospital; or

(b) an out-of-state public school or private residential facility.

(History: En. 75-7803 by Sec. 421, Ch. 5, L. 1971; AMD. Sec. 1, Ch. 174, L. 1975; AMD. Sec. 3, Ch. 539, L. 1977; R.C.M. 1947, 75-7803; AMD. Sec. 1, ch. 204, L. 1979; AMD. Sec. 1, Ch. 434, L. 1981; AMD. Sec 3, Ch. 618, L. 1985; AMD. Sec. 10, Ch 249, L. 1991; AMD. sec. 3, Ch 765, L. 1991; AMD. Sec. 2, ch. 356, L. 1993.)

Board of Public Education Rules

10.60.101—Board of Public Education Policy Statement

(1) It shall be the policy of the board of public education to foster the development and continuation of appropriate special education services for all children with disabilities the opportunity to become confident, dignified and self-sufficient members of society to the greatest extent possible. (History: Sec. 20-2-121, MCA; IMP, Sec. 20-7-402, MCA; Eff. 8/10/77; AMD, 1978 MAR p. 998, Eff. 7/15/78; AMD, 1982 MAR p. 2176, Eff. 12/31/82.)

10.60.104—Annual Report of Special Education Programs in Montana

(1) The superintendent of public instruction will report to the Board of Public Education each December the number of special education programs in the state, number of students enrolled in the programs and the total budget costs anticipated for the programs for the current school year. (History: Sec. 20-2-121, MCA; IMP, Sec. 20-7-402, MCA; eff. 8/10/77; AMD, 1978 MAR p. 998, Eff. 7/15/78.)

Responsibility for FAPE

10.16.104—Office of Public Instruction Responsibility for Free Appropriate Public Education (FAPE)

(1) The office of public instruction shall ensure that all students with disabilities, ages 3-18 inclusive who are entitled to a free appropriate public education, are provided a free appropriate public education in accordance with Individuals With Disabilities Education Act (IDEA) or federal and state statutes and regulations.

(2) The office of public instruction shall ensure that when local educational agencies provide education to individuals, ages 19-21 inclusive, individuals with disabilities are provided a free appropriate public education in accordance with IDEA.

(3) The office of public instruction shall ensure that all students with disabilities referred to or placed in private schools by a public agency receive the rights and protections under IDEA or federal and state statutes and regulations.

(4) If a local educational agency fails to provide a free appropriate public education for a student with disabilities in accordance with IDEA or federal and state statutes and regulations, the office of public instruction shall take immediate steps to ensure a free appropriate public education (FAPE) is made available to the student with disabilities.

(a) The office of public instruction may initiate one or more of the following options to ensure that a free appropriate public education is made available for the individual with disabilities:

(i) provide FAPE directly;

(ii) contract for services to provide FAPE;

(iii) provide an out-of-district placement in accordance with least restrictive environment regulations of IDEA;

(iv) recommend to the board of public education withholding of state education funds;

(v) deny in whole or part IDEA-B federal funds; or

(vi) recommend to the board of public education a change in accreditation status.

(b) Any costs incurred by the office of public instruction to provide FAPE to a student with disabilities, due to failure of the local educational agency to provide FAPE, may be recovered from the local educational agency through a reduction in state education funds upon recommendation of the office of public instruction and hearing before the board of public education. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.105—Office of Public Instruction Responsibility for Monitoring

(1) The office of public instruction shall provide an ongoing and systematic monitoring process to ensure compliance with all applicable statutes and regulations. The procedures shall apply to all educational programs for students with disabilities, including those administered by other state agencies and educational programs for students with disabilities referred to or placed in private schools by a public agency.

(a) The procedures shall include:

(i) on-site visitations of special education services in the local educational agencies;

(ii) state level review of local educational agency applications, individualized education programs and inquiries by parents, complaints and due process requests; and, whenever a local educational agency submits documentation in support of request for funds, the individual's eligibility for services under IDEA; and

(iii) procedures for identification of noncompliance and its correction including:

(A) the local educational agency's response to the findings; and

(B) written documentation verifying immediate discontinuance of the violation, elimination of any continuing effects of past violations and prevention of the occurrence of any future

violations and the steps taken to address the violation; and

(C) verification of compliance by the office of public instruction.

(2) If a local educational agency fails to voluntarily take steps to correct an identified deficiency or fails to take any of the actions specified in a local educational agency corrective action plan, the office of public instruction shall notify the local educational agency in writing of the actions the office of public instruction intends to take in order to enforce compliance with state and federal laws.

(a) The notice shall include a statement of the actions the office of public instruction intends to take, right to a hearing and consequence of the local educational agency's continued noncompliance on its accreditation status and approval for state and federal funding of special education services.

(b) The office of public instruction may initiate one or more of the options under ARM 10.16.104 to ensure compliance. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

34 CFR 300.128—Identification, location, and evaluation of children with disabilities

(a) *General Requirement.* Each State plan must include in detail the policies and procedures that the State will undertake, or has undertaken, to ensure that-

(1) All children with disabilities, regardless of the severity of their disability, and who are in need of special education and related services are identified, located, and evaluated; and

(2) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

(b) *Information.* Each State plan must:

(1) Designate the State agency (if other than the SEA) responsible for coordinating the planning and implementation of the policies and procedures under paragraph (a) of this section.

(2) Name each agency that participates in the planning and implementation and describe the nature and extent of its participation.

(3) Describe the extent that-

(i) The activities described in paragraph (a) of this section have been achieved under the current State plan; and

(ii) The resources named for these activities in that plan have been used.

(4) Describe each type of activity to be carried out during the next school year, including the role of the agency named under paragraph (b)(1) of this section, timelines for completing those activities, resources that will be used, and expected outcomes.

(5) Describe how the policies and procedures under paragraph (a) of this section will be

monitored to ensure that the SEA obtains-

(i) The number of children with disabilities within each disability category that have been identified, located, and evaluated; and

(ii) Information adequate to evaluate the effectiveness of those policies and procedures.

(6) Describe the method the State uses to determine which children are currently receiving special education and related services and which children are not receiving special education and related services.

(Authority: 20 U.S.C. 1412(2)(C))

Note 1: The State is responsible for ensuring that all children with disabilities are identified, located, and evaluated, including children in all public and private agencies and institutions in the State. Collection and use of data are subject to the confidentiality requirements of §§ 300.560-300.576.

Note 2: Under both Parts B and H of the Act, States are responsible for identifying, locating, and evaluating infants and toddlers from birth through 2 years of age who have disabilities or who are suspected of having disabilities. In States where the SEA and the State's lead agency for the Part H program are different and the Part H lead agency will be participating in the child find activities described in paragraph (a) of this section, the nature and extent of the Part H lead agency's participation must, under paragraph (b)(2) of this section, be included in the State plan. With the SEA's agreement, the Part H lead agency's participation may include the actual implementation of child find activities for infants and toddlers. The use of an interagency agreement or other mechanism for providing for the Part H lead agency's participation would not alter or diminish the responsibility of the SEA to ensure compliance with all child find requirements, including the requirement in paragraph (a) (1) of this section that all children with disabilities who are in need of special education and related services are evaluated.

34 CFR 300.129—Confidentiality of personally identifiable information

(a) Each State plan must include in detail the policies and procedures that the State will undertake, or has undertaken, in order to ensure the protection of the confidentiality of any personally identifiable information collected, used, or maintained under this part.

(b) The Secretary shall use the criteria in §§300.560-300.576 to evaluate the policies and procedures of the State under paragraph (a) of this section.

(Authority: 20 U.S.C. 1412(2)(D); 1417 (c))

Note: The confidentiality regulations were published in the *Federal Register* in final form on February 27, 1976 (41 FR 8603-8610), and met the requirements of Part B of the Act. Those regulations are incorporated in §§ 300.560-300.576.

10.16.112—Confidentiality in Child Find

(1) The office of public instruction shall give notice which is adequate to fully inform parents about the requirements under 34 CFR 300.128 and 34 CFR 300.561. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.117—State Advisory Panel

(1) The state superintendent shall appoint members to the state advisory panel for special education comprised of at least one representative of each of the following groups: individuals with disabilities, teachers of students with disabilities, parents of a student with disabilities, state and local education officials, and special education administrators. The state superintendent may expand the advisory panel to include additional persons to provide an appropriate balance between professional groups and consumers-advocates.

(2) The state advisory panel for special education shall:

(a) advise the office of public instruction of unmet needs within Montana in the education of students with disabilities;

(b) comment publicly on the Montana state plan for special education and rules or regulations proposed for issuance by the state and the procedures for distribution of funds under IDEA;

(c) assist the office of public instruction in developing and reporting such information and evaluations as may assist the Secretary of the U.S. Department of Education in the performance of any of the requirements of the IDEA; and

(d) annually review the findings and decisions of due process hearings conducted within Montana.

(3) The state advisory panel for special education shall:

(a) submit an annual report of panel activities and suggestions to the office of public instruction by July 1 of each year and shall make the report available to the public in a manner consistent with other public reporting requirements under IDEA;

(b) maintain official minutes which shall be made available to the public upon request;

(c) publicly announce all advisory panel meetings and agenda items prior to the meeting and conduct meetings open to the public; and

(d) provide interpreters and other necessary services at panel meetings for panel members or participants.

(4) The advisory panel shall serve without compensation but the office of public instruction must reimburse the panel for reasonable and necessary expenses for attending meetings and performing duties. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

Interagency Cooperation

Montana Statutes for Special Education

20-7-404. Cooperation of state agencies. The state department of health, the department of family services, and the state school for the deaf and blind shall cooperate with the superintendent of public instruction in assisting school districts in discovering children in need of special education. Nothing herein shall be construed to interfere with the purpose and function of these state agencies. (History: En. 75-7804 by Sec. 422, Ch. 5, L. 1971; AMD. Sec. 5, Ch. 539, L. 1977; R.C.M. 1947, 75-7804; AMD. Sec. 23, Ch. 609, L. 1987.)

10.16.106—Interagency Agreements

(1) The office of public instruction shall develop and implement interagency agreements with the board of public education, departments of social and rehabilitation services, health and environmental sciences, corrections and human services, and family services for the purpose of describing the role that each of these agencies plays in providing for special education or related services.

(2) The interagency agreement shall define the financial responsibility of each agency for providing a free appropriate public education and establish procedures for resolving interagency disputes among parties to the agreement, and establish procedures under which local educational agencies may initiate proceedings in order to secure reimbursement from agencies that are parties to the agreements or otherwise implement the provisions of the agreements.

(3) The interagency agreement shall designate the rules, regulations and educational standards applicable to educational services administered by other public agencies and the monitoring role of the office of public instruction. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.107—Interagency Coordination for Part H, IDEA

(1) The office of public instruction shall develop and implement interagency agreements with the department of social and rehabilitation services for the purpose of coordinating on transition matters between Part H and Part B of IDEA.

(2) The agreement shall include policies and procedures relating to a smooth transition for those individuals participating in the early intervention program under Part H of IDEA who will participate in preschool programs assisted under IDEA, including:

(a) determining financial responsibilities of agencies;

(b) identifying responsibilities for performing evaluations;

(c) developing and implementing educational programs;

(d) coordinating communication between agencies; and

(e) a method of ensuring that when a student with disabilities turns age 3, an individualized education program has been developed and implemented by the student's third birthday. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

Federal Funds Program Requirements

10.16.108—Notice of Availability of Federal Funds

(1) The office of public instruction shall annually provide written notice of the availability of federal funds under IDEA.

(2) The notice shall include:

(a) procedures for applicants to follow in completing and submitting application for federal funds under IDEA;

(b) amount of the federal funds and the period during which the local education agency may obligate funds;

(c) goals and objectives for use of the funds;

(d) description of state and federal requirements to which the local educational agency must comply in making application for funds;

(e) office of public instruction's procedure for approving applications;

(f) requirements for project narrative reports and fiscal reports;

(g) a statement of a local educational agency's obligation to make the application and any evaluations, periodic program plans, or reports required by the office of public instruction for this project available for public inspection; and

(h) an application form and an offer of technical assistance from the office of public instruction. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.109—Office of Public Instruction Approval of Program Narrative for Special Education and Related Services

(1) The office of public instruction shall approve a local educational agency or education cooperative program narrative that meets the education standards of the office of public instruc-

tion and the board of public education. Each program narrative shall be approved at least once every five years and when significant amendments to the program narrative are made.

(2) Approval procedures shall include compliance of the local educational agency's program narrative in accordance with ARM 10.16.1902, completion of narrative according to instructions and timelines, and verification of implementation of procedures identified in the program narrative through review of the local educational agency's annual application for federal or state special education funds, child count and special education monitoring results.

(3) If a local educational agency or education cooperative makes a significant amendment to its program narrative, the local educational agency or education cooperative shall follow the same procedures for submitting the original program narrative. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.110—Office of Public Instruction Approval/ Disapproval of Applications for Federal Funds

(1) Local educational agency federal funds applications shall be consistent with state and federal regulations and be completed according to application instructions and timelines as stated in notice of availability of federal funds and shall include written assurance that special education and related services are provided in accordance with the state plan and the local educational agency's program narrative.

(2) The office of public instruction approval procedures shall include:

(a) consideration of a local educational agency's response to onsite program monitoring, complaint investigation or due process hearing decisions which are adverse to the local educational agency;

(b) consideration of any previous office of public instruction or board of public education decisions resulting in withholding of funds;

(c) determination of maintenance of fiscal effort; and

(d) consideration of an approved program narrative.

(3) The office of public instruction shall provide written notice of approval of the application and federal funds award which shall include:

(a) amount of the funds approved;

(b) the period during which the local educational agency may obligate funds; and

(c) statement of federal requirements which apply to the use of the funds.

(4) The office of public instruction shall provide written notice which meets the requirements of U.S. Education Department General Administration Regulations (EDGAR) of disapproval of the application and subgrant award.

(5) If a local educational agency or education cooperative makes a significant amendment to its application for federal funds, the local educational agency or education cooperative shall

follow the procedures for submitting the original application. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.111—Office of Public Instruction Disapproval of Federal Funds: Opportunity for Hearing

(1) If a local educational agency alleges that the office of public instruction violates a state or federal statute or regulation with regard to the disapproval of, or failure to approve the application or project in whole or in part, or failure to provide federal funds in amounts in accordance with requirements of statutes and regulations, the local educational agency shall request a hearing within 30 days of the receipt of notice of proposed disapproval of funds by the office of public instruction.

(a) The request shall be made in writing by the board of trustees of the local educational agency to the state superintendent of public instruction.

(b) The request shall include a statement of the specific allegations of violation of state or federal statute or regulation by the office of public instruction and be signed by the chairperson of the board of trustees.

(2) Within 30 days after receipt of the request, the office of public instruction shall hold a hearing on the record and shall review its action.

(a) At least five days prior to the hearing, the office of public instruction shall make available at reasonable times and places all records of the agency pertaining to the appeal of the local educational agency, including records of other local education agencies.

(b) The proceedings for the hearing shall follow IDEA, and its implementing regulations.

(3) No later than 10 days after the hearings, the office of public instruction shall issue its written decision, including findings of fact and reasons for the ruling. The office of public instruction shall send a copy of the written decision and findings of fact and reasons for ruling to the board of trustees of the local educational agency.

(4) If the office of public instruction determines that its action was contrary to state or federal statutes or regulations under IDEA, the office of public instruction shall rescind its action.

(5) If the office of public instruction does not rescind its final action after the hearing procedure is completed, a local educational agency may appeal the decision to the secretary of the department of education. The local educational agency must appeal within 20 days of receipt of the written decision and findings of fact and reason for ruling. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

Child Count

34 CFR 300.750—Annual report of children served—report requirement

(a) The SEA shall report to the Secretary no later than February 1 of each year the number of children with disabilities, aged 3 through 21 residing in the State, who are receiving special education and related services.

(Authority: 20 U.S.C. 1411 (a)(3))

(b) The SEA shall submit the report on forms provided by the Secretary.

(Authority: 20 U.S.C. 1411 (a)(3))

Note: It is very important to understand that this report and the requirements that relate to it are solely for allocation purposes. The population of children the State may count for allocation purposes may differ from the population of children to whom the State must make FAPE available. For example, while section 611(a)(5) of the Act limits the number of children who may be counted for allocation purposes to 12 percent of the general school population aged 3 through 17 (in States that serve all children with disabilities aged 3 through 5) or 5 through 17 (in States that do not serve all children with disabilities aged 3 through 5), a State might find that 14 percent (or some other percentage) of its children have disabilities. In that case, the State must make FAPE available to all of those children with disabilities.

34 CFR 300.751—Annual report of children served—information required in the report

(a) In its report, the SEA shall include a table that shows-

(1) The number of children with disabilities receiving special education and related services on December 1 of that school year;

(2) The number of children with disabilities, aged 3 through 5, who are receiving FAPE;

(3) The number of those children with disabilities, aged 6 through 21, within each disability category, as defined in the definition of "children with disabilities" in §300.7; and

(4) The number of those children with disabilities, aged 3 through 21, for each year of age (3,4,5, etc.).

(b) For the purpose of this part, a child's age is the child's actual age on the date of the child count: December 1.

(c) The SEA may not report a child, aged 6 through 21, under more than one disability category.

(d) If a child with a disability aged 6 through 21 has more than one disability, the SEA shall report that child in accordance with the following procedure:

(1) A child with deaf-blindness must be reported under the category "deaf-blindness."

(2) A child who has more than one disability (other than deaf-blindness) must be reported under the category "multiple disabilities."

(Authority: 20 U.S.C. 1411 (a)(3); (5) (A) (ii); 1418(b))

34 CFR 300.752—Annual report of children served—certification

The SEA shall include in its report a certification signed by an authorized official of the agency that the information provided is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question.

(Authority: 20 U.S.C. 1411 (a)(3); 1417 (b))

34 CFR 300.753—Annual report of children served—criteria for counting children

(a) The SEA may include in its report children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that either-

(1) Provides them with both special education and related services; or

(2) Provides them only with special education if they do not need related services to assist them in benefitting from that special education.

(b) The SEA may not include children with disabilities in its report who-

(1) Are not enrolled in a school or program operated or supported by a public agency;

(2) Are not provided special education that meets State standards;

(3) Are not provided with a related service that they need to assist them in benefitting from special education;

(4) Are counted by a State agency under subpart 2 of part D of chapter 1 of Title I of the Elementary and Secondary Education Act of 1965; or

(5) Are receiving special education funded solely by the Federal Government. However, the State may count children covered under § 300.186(b).

(Authority: 20 U.S.C. 1411 (a)(3); 1417 (b))

Note 1: Under paragraph (a) of this section, the State may count children with disabilities in a Head Start or other preschool program operated or supported by a public agency if those children are provided special education that meets State standards.

Note 2: Special education, by statutory definition, must be at no cost to parents. As of September 1, 1978, under the FAPE requirement, both special education and related services must be at no cost to parents.

There may be some situations, however, where a child receives special education from a public source at no cost, but whose parents pay for the basic or regular education. This child may be counted. The Department expects that there would only be limited situations where special education would be clearly separate from regular education--generally, where speech services is the only special education required by the child. For example, the child's parents may have enrolled the child in a regular program in a private school, but the child might be receiving speech services in a program funded by the LEA. Allowing these children to be counted will provide incentives (in addition to complying with the legal requirement in section 613(a)(4)(A) of the Act regarding private schools) to public agencies to provide services to children enrolled by their parents in private schools, since funds are generated in part on the basis of the number of children provided special education and related services. Agencies should understand, however, that if a public agency places or refers a child with a disability to a public or private school for educational purposes, special education includes the entire educational program provided to the child. In that case, parents may not be charged for any part of the child's education.

A State may not count Indian children on or near reservations and children on military facilities if it provides them no special education. If an SEA or LEA is responsible for serving these children, and does provide them special education and related services, they may be counted.

34 CFR 300.754—Annual report of children served—other responsibilities of the State educational agency

In addition to meeting the other requirements of §§ 300.750-300.753, the SEA shall-

(a) Establish procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and related services;

(b) Set dates by which those agencies and institutions must report to the SEA to ensure that the State complies with § 300.750(a);

(c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made;

(d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under §§ 300.750-300.753; and

(e) Ensure that documentation is maintained that enables that State and the Secretary to audit the accuracy of the count.

(Authority: 20 U.S.C. 1411(a)(3); 1417 (b))

Note: States should note that the data required in the annual report of children served are not to be transmitted to the Secretary in personally identifiable form. States are encouraged to collect these data in non-personally identifiable form.

10.16.113—Office of Public Instruction Responsibility for Child Count

(1) The office of public instruction shall annually direct local educational agencies and other state-operated educational programs to count the number of students with disabilities receiving special education and related services on December 1.

(2) In notifying local educational agencies and state-operated programs of their responsibility, the office of public instruction shall identify:

(a) procedures to follow in completing, submitting and verifying the count;

(b) personally identifiable information required and statement of maintenance of confidentiality;

(c) a statement of a local educational agency's and state operated program's obligation to ensure an accurate count; and

(d) an offer of technical assistance from the office of public instruction.

(3) The office of public instruction shall provide written assurance to the U.S. Department of Education that an unduplicated and accurate count has been made and that students with disabilities counted on December 1 had an individualized education program implemented on the date the count was taken. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.114—Misclassified Children

(1) Prior to December 1 of each year, the office of public instruction shall notify all local education agencies regarding their responsibility to identify, report and aid in the recovery of funds appropriated for services to misclassified children.

(2) If the office of public instruction determines that IDEA funds have been made available to a local educational agency as the result of misclassified children, the office of public instruction must immediately implement procedures to recover funds. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.115—Procedures for Recovery of Federal Funds for Misclassified Children

(1) The state superintendent of public instruction shall send written notice of IDEA funds made available to a local educational agency as the result of misclassified children.

(a) The notice shall include a statement of the number of misclassified children, means by which the misclassified children were discovered, specific determination of each occurrence of misclassification, and amount, schedule of payment, options for resolving and method of returning funds for misclassified children to the office of public instruction.

(b) The notice must also include a statement of the local educational agency's right to a hearing.

(2) A local educational agency shall have 14 days from receipt of the notice in which to reply in writing to the office of public instruction regarding the accuracy or completeness of its findings.

(3) Upon receipt of the written reply from the local educational agency, the office of public instruction shall review, and, if necessary, revise its findings. The office of public instruction shall send written response of its review of the local educational agency reply within 14 days of receipt of the reply.

(4) If a local educational agency disagrees with the findings of the office of public instruction in regard to IDEA funds made available to the local educational agency as a result of misclassified children, the local educational agency may request a hearing under ARM 10.16.111. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.116—Failure to Return Federal Funds for Services to Misclassified Children

(1) If the local educational agency fails to reimburse the office of public instruction according to schedule for payments stated in the written notice for funds made available to local educational agency as a result of misclassified children, the office of public instruction shall implement state procedures under ARM 10.16.115. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

PART III

LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR SPECIAL EDUCATION

Accreditation Standard

10.55.802—Opportunity and Educational Equity

(1) The school district shall not discriminate against any student on the basis of sex, race, marital status, national origin, or physical or mental disability in any area of accreditation. This includes programs, facilities, textbooks, curriculum, counseling, library services, and extracurricular activities. It is the purpose of the accreditation standards to guarantee equality of educational opportunity to each person regardless of sex, race, marital status, national origin, or physical or mental disability. (History: Sec. 20-2-114 MCA; IMP, Sec. 20-2-121 MCA; NEW, 1989 MAR p. 342, Eff. 7/1/89.)

10.55.805—Special Education

(1) Each school shall comply with all federal and state laws and regulations addressing special education.

(2) Each school shall use the Montana Special Education Reference Manual as guidance for administering special education programs.

(3) Each school shall provide structured support and assistance to regular education teachers in identifying and meeting diverse student needs, and shall provide a framework for considering a full range of alternatives for addressing student needs.

(4) Each school shall be responsible for the following:

(a) students with disabilities shall be given opportunities to become confident, dignified, and self-sufficient members of society;

(b) to the maximum extent possible, and when appropriate, students with disabilities are educated with students without disabilities in the district in which they live;

(c) a student shall receive special education only when documentation shows that the student cannot be appropriately educated in the regular program; and

(d) a current individualized education program is prepared for each student receiving special education.

(5) Each school district with middle, junior high, 7th and 8th grade budgeted at high school rates or high school(s) shall require the development and use of processes to waive specific learner goals based on individual student needs, performance levels, age, maturity, and assessment of ability. Goals which are viewed as the result of this process must be identified on a student's individualized education program.

(6) A student who has successfully completed the goals identified on an individualized education program shall be awarded a diploma. (History: Sec. 20-2-114 MCA; IMP, Sec. 20-2-121 MCA; NEW, 1989 MAR p. 342, Eff. 7/1/89.)

Responsibility for Free Appropriate Public Education

Montana Statutes for Special Education

20-5-101. Admittance of child to school. (1) The trustees shall assign and admit any child to a school in the district when the child is:

(a) 6 years of age or older on or before September 10 of the year in which the child is to enroll but has not yet reached his 19th birthday;

(b) a resident of the district; and

(c) otherwise qualified under the provisions of this title to be admitted to the school.

(2) The trustees of any district may assign and admit any nonresident child to a school in the district under the tuition provisions of this title.

(3) The trustees may at their discretion assign and admit a child to a school in the district who is under 6 years of age or an adult who is 19 years of age or older if there are exceptional circumstances that merit waiving the age provision of this section.

(4) The trustees shall assign and admit a child who is homeless, as defined in the Stewart B. McKinney Act (P.L. 100-77), to a school in the district regardless of residence. Tuition for a nonresident child shall be paid in accordance with the tuition provisions of this title. (History: En. 75-6302 by Sec. 115, ch. 5, L. 1971; R.C.M. 1947, 75-6302; AMD. Sec 2, Ch. 334, L. 1979; AMD. Sec 2, Ch. 558, L. 1979; AMD. Sec. 74, Ch. 575, L. 1981; AMD. Sec. 1, Ch. 120, L. 1989)

20-5-102. Compulsory enrollment and excuses. (1) Except as provided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to be instructed in the program prescribed by the board of public education pursuant to 20-7-111 until the later of the following dates:

(a) the child's 16th birthday;

(b) the date of completion of the work of the 8th grade.

(2) A parent, guardian, or other person shall enroll the child in the school assigned by the trustees of the district within the first week of the school term or when he establishes residence in the district unless the child is:

(a) enrolled in a school of another district or state under any of the tuition provisions of this title;

(b) provided with supervised correspondence study or supervised home study under the transportation provisions of this title;

(c) excused from compulsory school attendance upon a determination by a district judge that attendance is not in the best interest of the child;

(d) excused by the board of trustees upon a determination that attendance by a child who has attained the age of 16 is not in the best interest of the child and the school; or

(e) enrolled in a nonpublic or home school that complies with the provisions of 20-5-109. For the purposes of this subsection(e), a home school is the instruction by a parent of his child, stepchild, or ward in his residence and a nonpublic school includes a parochial, church, religious, or private school. (History: En. 75-6303 by Sec. 116, Ch. 5, L. 1971; AMD. Sec. 1, Ch. 389, L. 1971; AMD. Sec. 3, Ch. 91, L. 1973; AMD. Sec. 2, Ch. 137, L. 1975; R.C.M. 1947, 75-6303; AMD. Sec. 1, Ch. 504, L. 1979; AMD. Sec. 1, Ch. 355, L. 1983; AMD. Sec. 1, Ch 249, L. 1991.)

20-5-103. Compulsory attendance and excuses. (1) Except as provided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to attend the school in which he is enrolled for the school term and each school day therein prescribed by the trustees of the district until the later of the following dates:

(a) the child's 16th birthday;

(b) the date of completion of the work of the 8th grade.

(2) The provisions of subsection (1) do not apply in the following cases:

(a) The child has been excused under one of the conditions specified in 20-5-102;

(b) The child is absent because of illness, bereavement, or other reason prescribed by the policies of the trustees; or

(c) The child has been suspended or expelled under the provisions of 20-5-202. (History: En. 75-6304 by Sec. 117, Ch. 5, L. 1971; AMD. Sec. 8, Ch. 266, L. 1977; R.C.M. 1947, 75-6304; AMD. Sec. 2, Ch. 504, L. 1979.)

20-7-117. Five-year-old schooling and preschool programs. (1) The trustees of an elementary district shall establish or make available a program capable of accommodating, at a minimum, all the children in the district who will be 5 years old on or before September 10 of the school year for which the program is to be conducted or who have been enrolled by special permission of the board of trustees. The program must be an integral part of the elementary school and must be financed and governed accordingly, provided that to be eligible for inclusion in the calculation of ANB pursuant to 20-9-311, a child must have reached the age of 5 on or before September 10 of the school year covered by the calculation or have been enrolled by special permission of the board of trustees.

(2) The trustees of an elementary school district may establish and operate a free preschool program for children between the ages of 3 and 5 years. When preschool programs are established, they must be an integral part of the elementary school and must be governed accordingly. Financing of preschool programs may not be supported by money available from state equalization aid. (History: En. 75-7507 by Sec. 378, Ch.5, L. 1971; AMD. Sec. 3, Ch. 345, L. 1973; R.C.M. 1947, 75-7507; AMD. Sec. 3, Ch 334, L. 1979; AMD. Sec. 68, Ch. 370, L. 1987; AMD. Sec. 1, Ch. 399, L. 1991.)

20-7-411. Regular classes preferred—obligation to establish special education program. (1) All children with disabilities in Montana are entitled to a free appropriate public education provided in the least restrictive alternative setting. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, must be educated with children who do not have disabilities. Separate schooling or other removal of children with disabilities from the regular educational environment may occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) The board of trustees of every school district shall provide or establish and maintain a special education program for each child with disabilities between the ages of 6 and 18, inclusive.

(3) The board of trustees of each elementary district shall provide or establish and maintain a special education program for each preschool child with disabilities between the ages of 3 and 6, inclusive.

(4) The board of trustees of a school district may meet its obligation to serve persons with disabilities by establishing its own special education program, by establishing a cooperative special education program, or by participating in a regional services program.

(5) The trustees of a school district shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with disabilities if required as a part of the child's special education services, related services, or supplementary aids. (History: En. 75-7805 by Sec. 423, Ch. 5, L. 1971; AMD. Sec. 1, Ch. 123, L. 1971; AMD. Sec 2, Ch. 93, L. 1974; AMD. Sec. 6, Ch. 539, L. 1977; R.C.M. 1947, 75-7805; AMD. Sec. 3, Ch. 558, L. 1979; AMD. Sec. 1, Ch. 258, L. 1987; AMD. Sec. 4, Ch. 249, L. 1991; AMD Sec. 3, Ch. 356, L. 1993.)

20-7-412. Establishment of individual district special education program. (1) The trustees of a district, upon obtaining the approval of the superintendent of public instruction, shall establish and maintain a special education program whenever, in the judgment of the trustees and the superintendent of public instruction:

(a) there are sufficient numbers of children with disabilities in the district to justify the establishment of a program; or

(b) an individual child requires special education services such as home or hospital tutoring, school-to-home telephone communication, or other individual programs.

(2) Programs may be established for persons with disabilities between the ages of 0 and 21 when the superintendent of public instruction and the trustees have determined that the programs will:

(a) assist a person to achieve levels of competence that will enable him to participate in the regular instruction of the district when he could not participate without special education;

(b) permit the conservation or early acquisition of skills that will provide the person with an equal opportunity to participate in the regular instruction of the district; or

(c) provide other demonstrated educational advantages that will materially benefit the person.

(3) Approval and operation of programs established pursuant to subsection (2) do not obligate the state or a school district to offer regular educational programs to a similar age group unless specifically provided by law.

(4) When an agency that has responsibility for a person with disabilities over 21 but not more than 25, inclusive, cannot provide appropriate services to that person, the agency may contract with the local school district to provide the services. (History: En. 75-7806 by Sec. 424, Ch. 5, L. 1971; AMD. Sec 1, Ch. 122, L. 1971; AMD. Sec 2, Ch 123, L. 1971; AMD. Sec. 3, Ch. 93, L. 1974; AMD. Sec. 7, Ch. 539, L. 1977; R.C.M. 1947, 75-7806; AMD. Sec. 4, Ch. 558, L. 1979; AMD. Sec. 5, Ch. 249, L. 1991.)

20-7-414. Determination of children in need and type of special education needed—approval of classes and programs by superintendent. (1) The determination of the children requiring special education and the type of special education needed by these children is the responsibility of the school district, and the determination must be made in compliance with the procedures established in the rules of the superintendent of public instruction. The school district shall make available a free appropriate public education to all children who are eligible under the Individuals With Disabilities Education Act and who reside in the school district.

(2) Whenever the trustees of a district intend to establish a special education class or program, they shall apply for approval and funding of the class or program by the superintendent of public instruction. The superintendent of public instruction shall approve or disapprove the application for the special education class or program on the basis of its compliance with the laws of the state of Montana, the special education policies adopted by the board of public education, and the rules of the superintendent of public instruction. A special education class may not be operated by the trustees without the approval of the superintendent of public instruction. Each special education class or program must be approved annually to be funded as part of the allowable cost payment for special education. (History: En. 75-7811 by Sec. 429, Ch. 5, L. 1971; AMD. Sec. 12, Ch. 539, L. 1977; R.C.M. 1947, 75-7811; AMD. Sec.4, Ch. 618, L. 1985; AMD. Sec. 17, Ch 11, Sp. L. June 1989; AMD. Sec. 6, Ch. 249, L. 1991; AMD. Sec. 4, Ch. 356, L. 1993; AMD. Sec. 55, Ch. 633, L. 1993.)

10.16.2701—Local Educational Agency Responsibility for Students with Disabilities

(1) The local educational agency (LEA) in which the student with disabilities resides is responsible for ensuring that the student has available a free appropriate public education.

(2) To the extent consistent with their number and location, the local educational agency shall make provision for the participation of private school students with disabilities in special education and related services provided by the local educational agency.

(a) Each LEA shall provide special education and related services designed to meet the needs of private school students with disabilities residing in the jurisdiction of the agency. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913; Eff. 8/13/93.)

10.16.2702—Local Educational Agency Responsibility for Preschool Special Education and Related Services

(1) The local educational agency shall provide a free appropriate public education to all students with disabilities who qualify for special education and related services under IDEA, Part B, beginning on the student's 3rd birthday. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913; Eff. 8/13/93.)

10.16.2703—Local Educational Agency Responsibility for Promotion of Students with Disabilities

(1) The local educational agency shall have procedures to ensure continuation of a free appropriate public education for students with disabilities when promoting the student from preschool to elementary school and from elementary school to junior high or middle school and from junior high or middle school to high school.

(2) Whenever a student with disabilities is receiving special education and related services in a setting not defined by the school's learner outcomes (accreditation standards) and the student is age 14 on or before September 10th of the school year, the responsibility for ensuring a free appropriate public education changes from the elementary local educational agency to the high school local educational agency.

(3) A student with disabilities shall be promoted or retained according to local educational agency criteria unless specific learner outcomes are waived in the student's IEP.

(4) A student with disabilities who has completed a prescribed course of studies shall be eligible for graduation from high school.

(a) A student who has successfully completed the goals on the IEP shall have completed a prescribed course of study.

(b) Documentation of completion of the annual goals shall be included in the periodic review of the IEP. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; 1993 MAR p. 1913; NEW, Eff. 8/13/93.)

(Rule 10.16.1212 has been written into NEW RULE 10.16.2703. This rule will be repealed later this year.)

10.16.1212—Promotion of Students from Elementary to Secondary Programs

(1) Promotion of students with disabilities from elementary to junior high and from junior high to senior high requires that systems of communication and information exchange are developed and function between each level of educational instruction. Chronological age and physical development should be a strong factor in the decision to move a student from the junior to the senior high. Consideration also must be given to the least restrictive educational principle in planning for promotion.

(2) If a student is in a non-graded educational program (children who are not classified by the school district as being in grades 1, 2, 3, etc., and doing the work customarily assigned to children in grades 1, 2, 3, etc.), the school district's responsibility will change from the elementary to the high school beginning the school year which follows the 14th birthday of the student. The high school district must then determine, based upon the recommendations of a child study team composed of appropriate high school personnel as determined under ARM 10.16.1204 plus elementary personnel who have provided direct services to the student in the past, the most appropriate educational placement for the student. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82.)

10.16.1213—Parental Involvement

(1) Each local educational agency or public agency shall afford parents the opportunity to participate in the child study team process and individualized education program meetings.

(2) Each local educational agency or public agency shall take whatever action is necessary to ensure parent participation, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(3) No parent of a child receiving special education and related services will be required to perform duties not required of any other parent whose child is enrolled in the local educational agency. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1201—Local Educational Agency Child Find Responsibilities

(1) Each local educational agency shall establish procedures to ensure that all students with disabilities living within the jurisdiction of the local educational agency regardless of the severity of their disability are identified, located, and evaluated including a practical method to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

(a) The procedures shall include a method to screen and develop criteria for further assessment for children between the ages of birth to 21, including all children in public and private agencies operated within the local educational agency legal boundaries.

(b) The written procedures shall describe the methods for collecting, maintaining and reporting current and accurate data on all student identification activities. At a minimum, the procedures must:

(i) name the title of the person responsible for the coordination, implementation and documentation of the procedures;

(ii) describe student identification activities, including audiological, health, speech-language and visual screening, and review of data or records for children who have been or are being considered for retention, delayed admittance, long-term suspension or expulsion, or waiver of learner outcomes (accreditation standards);

(iii) describe the role and responsibilities, if any, of other public or private agencies; and

(iv) ensure the collection and use of data are subject to the confidentiality requirements of these rules.

(2) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the local educational agency jurisdiction of the activity. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1983 MAR p. 1668, Eff. 11/11/83; AMD, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.2704—Local Educational Agency Responsibility for Child Count

(1) Each local educational agency shall count the number of students with disabilities receiving special education and related services on December 1 of each year and submit the count to the office of public instruction by December 10 of that year.

(a) The count shall include only those students with disabilities who:

(i) are identified in accordance with ARM 10.16.1116 through 10.16.1124 and have an individualized education program in effect on the date the count is taken;

(ii) are enrolled in public or private school within the jurisdiction of the local educational agency boundaries; and

(iii) are not receiving special education and related services funded solely by other federal agencies.

(b) Students with disabilities shall be identified on the count by:

(i) student initials;

(ii) gender;

(iii) birthdate;

(iv) category of disability; and

(v) any other information the office of public instruction requires to ensure an unduplicated count.

(2) The child count shall be submitted on forms provided by the office of public instruction and shall include written assurance that students with disabilities counted on December 1 had an individualized education program implemented on the day the count was taken.

(3) If December 1 falls on a Saturday or Sunday, the count shall be taken on the first Monday following December 1.

(4) Each local educational agency shall report any corrections in child count to the office of public instruction on or before February 25 of the year following the date of the count. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

Federal Funds

10.16.2705—Local Educational Agency Federal Funds Applications

(1) In order to receive federal entitlement funds under IDEA, a local educational agency shall annually submit an application to the office of public instruction in accordance with application instructions and within announced timelines.

(2) The application shall meet the requirements of Section 436 of the General Education Provisions Act, and include:

(a) Written assurances to the office of public instruction that the local educational agency:

(i) provides special education and related services in accord with the local educational agency's program narrative under IDEA; and

(ii) uses accounting system that permits identification of use of designated funds.

(b) Written descriptions of how the applicant will, in the ensuing project period year, use:

(i) IDEA funds;

(ii) the office of public instruction comprehensive system of personnel development; and

(iii) facilities, services and personnel for delivery of special education and related services.

(c) Signed debarment and certifications as required.

(d) Data, reports and information to enable the office of public instruction to perform its duties.

(e) Written description of how the applicant will meet the federal requirements for participation of students enrolled in private schools, including:

(i) the number of students identified as eligible to receive benefits under IDEA who are enrolled in private schools with the jurisdiction of the applicant;

(ii) the number who will receive benefits under IDEA;

(iii) the basis upon which students are selected;

(iv) the manner and extent to which consultation was conducted with representatives of private school students; and

(v) the places and times that the students will receive benefits under IDEA and the differences, if any, between the program benefits the applicant will provide to private school students and students enrolled in the local educational agency, and the reasons for the differences.

(3) If a local educational agency makes a significant amendment to its application, the local educational agency shall follow the procedures for submitting an original application under IDEA. The office of public instruction shall follow the same review and approval procedures as required for an original application. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.2706—Types of Applications for Federal Funds—Single/Consolidated

(1) A local educational agency may submit either a single district application or a consolidated application unless one of the following conditions apply:

(a) a local educational agency which enters into a cooperative interlocal agreement as provided in sections 20-7-451 and 20-7-457, MCA, shall submit a single consolidated application; and

(b) a local educational agency which generates less than $7,500 in entitlement funds under IDEA, Part B, or which is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of students with disabilities shall submit a consolidated application.

(2) A local educational agency may submit a single district application if it has:

(a) an entitlement of $7,500 or more; and

(b) established, satisfactorily to the office of public instruction, special education and related services which provide a free appropriate public education to students with disabilities.

(3) A consolidated application shall meet the same requirements as a single district application.

(a) If the cooperative interlocal agreement does not specifically delegate the power to apply for IDEA funds on behalf of the participating local educational agency to a prime applicant, each participating local educational agency must delegate to the prime applicant the authority to apply for IDEA funds. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1902—Program Narrative

(1) Each local educational agency or education cooperative must have a written program narrative that describes policies and procedures for the provision of special education and related services within the local educational agency or education cooperative. The program narrative shall include the following components:

(a) Written procedures to ensure:

(i) that all students residing within the jurisdiction of the local educational agency who are disabled and in need of special education and related services are identified, located and evaluated, including students in all public and private agencies and institutions within its jurisdiction;

(ii) that confidentiality of personally identifiable information meets the standards of 34 CFR 300.221;

(iii) implementation and use of the office of public instruction comprehensive system of personnel development;

(iv) that in meeting the goal under 34 CFR 300.222, the local educational agency makes provision for participation of and consultation with parents or guardians of students with disabilities;

(v) that to the maximum extent practicable, and consistent with 34 CFR 300.550 through 300.553 of subpart E, the local educational agency provides special services to enable students with disabilities to participate in regular educational programs, including the types of alternative placements that are available for students with disabilities, and the number of students within each disability category who are served in each type of placement;

(vi) that the local educational agency complies with 34 CFR 300.530 through 300.534;

(vii) that the local educational agency complies with 34 CFR 300.340 through 300.349; and

(viii) procedural safeguards.

(b) Written statement for a goal of providing full educational opportunity to all students with disabilities, aged birth through 21, and a date when the goal will be accomplished; and

(c) Copy of local educational agency special education policies and forms.

(2) If a local educational agency participates in an education cooperative under Sections 20-7-451 and 20-7-457, MCA, the local educational agency must submit a single program narrative through the cooperative. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77; AMD, 1993 MAR p. 1913, Eff. 8/13/93.)

34 CFR 300.146—Annual Evaulation

Each State plan must include procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of children with disabilities, including evaluation of IEPs.

(Authority: 20 U.S.C. 1413(a)(11))

10.16.1904—Evaluation

(1) All special education programs must be evaluated with both objective and subjective measures. Objective measures must be appropriate in terms of the reliability and validity to assure reasonably accurate information. Subjective data also may be used to substantiate, clarify, or enrich the evaluation results. The evaluation design must be concise and measure the degree to which the stated educational objectives have been accomplished. Results should be reported in a manner that is conducive to decision making by all educational agencies and evaluators.

(2) Evaluation should be an ongoing process with reporting completed at least once a year. The district should make these reports available to the public on request. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77.)

PART IV

PROCEDURAL SAFEGUARDS IN SPECIAL EDUCATION

Surrogate Parents

Montana Statutes for Special Education

20-7-461. Appointment and termination of appointment of surrogate parent. (1) A school district or institution that provides education to a child with disabilities shall adopt procedures to assign an individual to act as a surrogate parent for a child with disabilities whenever the parents or guardian cannot be identified or, after reasonable efforts, the location of the parents cannot be discovered or if the child is a ward of the state. The determination of need for a surrogate parent must be made within 10 days of the date on which the school district or its designee or the governing authority of an institution or its designee learns of the presence of the child in the district. If the child is in need of a surrogate parent, the trustees of a school district or their designee or the governing authority of an institution or its designee shall nominate a surrogate for the child within 30 days of that determination.

(2) The person nominated as a surrogate parent must be an adult who is not an employee of a state or local educational agency. The surrogate parent may not have a vested interest that will conflict with the person's representation and protection of the child. The surrogate, whenever practicable, must be knowledgeable about the educational system, special education requirements, and the legal rights of the child in relation to the educational system. Whenever practicable, the surrogate parent must be familiar with the cultural or language background of the child.

(3) The nomination for appointment of a surrogate parent, along with all necessary supporting documents, must be submitted to the youth court for official appointment of the surrogate parent by the court. The trustees of a school district or their designee or the governing authority of an institution or its designee shall take all reasonable action to ensure that the youth court appoints or denies the appointment of a person nominated as a surrogate parent within 45 days of the court's receipt of all necessary supporting documents. If the youth court denies an appointment, the trustees of a district or their designee or the governing authority of an institution or its designee shall nominate another person to be appointed as the surrogate parent.

(4) The superintendent of public instruction shall adopt rules for a procedure to terminate the appointment of a surrogate parent when:

(a) a child's parents are identified;

(b) the location of the parents is discovered;

(c) the child is no longer a ward of the state; or

(d) the surrogate parent wishes to discontinue the appointment. (History: En. Sec. 5, Ch. 618, L. 1985; AMD. Sec. 7, Ch. 249, L. 1991; AMD. Sec. 5, Ch. 356, L. 1993)

20-7-462. Responsibilities of surrogate parent. A person assigned as a surrogate parent shall represent the child with disabilities in all decision-making processes concerning the child's education by:

(1) becoming thoroughly acquainted with the child's history and other information contained in school and other pertinent files, records, and reports relating to that child's educational needs;

(2) complying with state and federal law as to the confidentiality of all records and information to which he is privy pertaining to that child and using discretion in the necessary sharing of the information with appropriate people for the purpose of furthering the interests of the child;

(3) becoming familiar with the educational evaluation and placement for the child and by giving his approval or disapproval for the evaluation and placement and reviewing and evaluating special education programs pertaining to the child and such other programs as may be available; and

(4) initiating any mediation, hearing, or appeal procedures necessary and seeking qualified legal assistance whenever such assistance is in the best interest of the child. (History: En. Sec. 6, Ch. 618, L. 1985; AMD. Sec. 10, Ch. 249, L. 1991.)

20-7-463. Surrogate parent—immunity from liability—reimbursement. (1) A person appointed as a surrogate parent is exempt from liability for any act or omission performed by him in his capacity as a surrogate parent except an act or omission which is found to have been committed in a grossly negligent or malicious manner.

(2) A surrogate parent has the same protection and immunity in professional communications as a teacher.

(3) A surrogate parent must be reimbursed by the school district for all reasonable and necessary expenses incurred in the pursuit of his duties, as prescribed by rules adopted by the superintendent of public instruction. (History: En. Sec. 7, Ch. 618, L. 1985.)

34 CFR 300.514—Surrogate parents

(a) *General.* Each public agency shall ensure that the rights of a child are protected when—

(1) No parent (as defined in §300.13) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) The child is a ward of the State under the laws of that State.

(b) *Duty of public agency.* The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parents.This must include a method: (1) For determining whether a child needs a surrogate parent, and (2) for assigning a surrogate parent to the child.

(c) *Criteria for selection of surrogates.* (1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall ensure that a person selected as a surrogate—

(i) Has no interest that conflicts with the interest of the child he or she represents; and

(ii) Has knowledge and skills that ensure adequate representation of the child.

(d) *Non-employee requirement; compensation.* (1) A person assigned as a surrogate may not be an employee of a public agency that is involved in the education or care of the child.

(2) A person who otherwise qualifies to be a surrogate parent under paragraphs (c) and (d)(1) of this section, is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(e) *Responsibilities.* The surrogate parent may represent the child in all matters relating to—

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

(Authority: 20 U.S.C. 1415(b)(1)(B))

10.16.1104—Surrogate Parents

(1) The local educational agency or public agency shall ensure that the rights of a child are protected when the parents of the child cannot be identified, or the whereabouts of the parents cannot be discovered or the child is a ward of the state.

(2) The local educational agency shall develop procedures for:

(a) determining whether a student with disabilities needs a surrogate parent;

(b) assigning a surrogate parent; and

(c) terminating a surrogate parent appointment.

(3) Local educational agencies shall ensure that a person selected as a surrogate parent:

(a) has no interest that conflicts with the interests of the child he or she represents; and

(b) has knowledge and skills that ensure adequate representation of the child.

(c) A person assigned as a surrogate is not an employee of the local educational agency or public agency which is involved in the education or care of the child.

(4) A person, who otherwise qualifies to be a surrogate parent under this rule, is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate

parent.

(5) The surrogate may represent the child in all matters relating to:

(a) the identification, evaluation, and educational placement of the child; and

(b) the provision of a free appropriate public education to the child.

(6) The local educational agency shall petition a court of competent jurisdiction for termination of the surrogate parent appointment when the child's parents are identified, the whereabouts of the parents are discovered, the child is no longer a ward of the state or the surrogate parent wishes to discontinue her or his appointment. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1993 MAR p. 1913, Eff. 8/13/93.)

Parent Notice and Consent

34 CFR 300.504—Prior notice; parent consent

(a) *Notice.* Written notice that meets the requirements of §300.505 must be given to the parents of a child with a disability a reasonable time before the public agency—

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(2) Refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child.

(b) *Consent: procedures if a parent refuses consent.* (1) Parental consent must be obtained before—

(i) Conducting a preplacement evaluation; and

(ii) Initial placement of a child with a disability in a program providing special education and related services.

(2) If State law requires parental consent before a child with a disability is evaluated or initially provided special education and related services, State procedures govern the public agency in overriding a parent's refusal to consent.

(3) If there is no State law requiring consent before a child with a disability is evaluated or initially provided special education and related services, the public agency may use the hearing procedures in §§300.506-300.508 to determine if the child may be evaluated or initially provided special education and related services without parental consent. If it does so and the hearing officer upholds the agency, the agency may evaluate or initially provide special education and related services to the child without the parent's consent, subject to the parent's rights under §§300.510-300.513.

(c) *Additional State consent requirements.* In addition to the parental consent requirements described in paragraph (b) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

(d) *Limitation.* A public agency may not require parental consent as a condition of any benefit to the parent or the child except for the service or activity for which consent is required under paragraphs (b) or (c) of this section.

(Authority: 20 U.S.C. 1415(b)(1)(C), (D); 1412(2), (6))

Note 1: Any changes in a child's special education program after the initial placement are not subject to the parental consent requirements in paragraph (b)(1) of this section, but are subject to the prior notice requirement in paragraph (a) of this section and the IEP requirements of §§300.340-300.350.

Note 2: Paragraph (b)(2) of this section means that if State law requires parental consent before evaluation or before special education and related services are initially provided, and the parent refuses (or otherwise withholds) consent, State procedures, such as obtaining a court order authorizing the public agency to conduct the evaluation or provide the education and related services, must be followed.

If, however, there is no legal requirement for consent outside of these regulations, the public agency may use the due process procedures of §§300.506-300.508 to obtain a decision to allow the evaluation or services without parental consent. The agency must notify the parent of its actions, and the parent has appeal rights, as well as rights at the hearing itself.

Note 3: If a State adopts a consent requirement in addition to those described in paragraph (b) of this section and consent is refused, paragraph (d) of this section requires that the public agency must nevertheless provide the services and activities that are not in dispute. For example, if a State requires parental consent to the provision of all services identified in an IEP and the parent refuses to consent to physical therapy services included in the IEP, the agency is not relieved of its obligation to implement those portions of the IEP to which the parent consents.

If the parent refuses to consent and the public agency determines that the service or activity in dispute is necessary to provide FAPE to the child, paragraph (c) of this section requires that the agency must implement its procedures to override the refusal. This section does not preclude the agency from reconsidering its proposal if it believes that circumstances warrant.

10.16.2707—Written Notice

(1) Written notice which meets the requirements of the written notice of Part B of the Individuals with Disabilities Education Act (IDEA) must be given to the parent of a child with disabilities a reasonable time before the local educational agency:

(a) proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student; or

(b) refuses to initiate or change the identification, evaluation, or educational placement of

the student or the provision of a free appropriate public education to the student.

(2) The written notice must include:

(a) a full explanation of all of the procedural safeguards available to the parents under Subpart E of Part B of IDEA;

(b) a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;

(c) a description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and

(d) a description of any other factors which are relevant to the agency's proposal or refusal.

(3) The notice must be:

(a) Written in language understandable to the general public; and

(b) provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(4) If the native language or other mode of communication of the parent is not a written language, the State or local educational agency shall take steps to ensure:

(a) that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(b) that the parent understands the content of the notice; and

(c) that there is written evidence that the requirements in paragraph (4)(a) and (b) of this section have been met. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.2708—Parental Consent

(1) Written parental consent to conduct an initial evaluation must be obtained by the local educational agency or public agency a reasonable time prior to the evaluation process.

(a) Written parental approval applies only to those procedures used selectively with an individual student (i.e., individual intelligence measures, audiometric evaluation, speech, voice, language evaluation and diagnostic skill testing) and not to basic tests administered to all children in school (i.e., yearly achievement measures, vision screening, hearing screening and speech screening).

(b) The local educational agency shall maintain written documentation of the date the notice of intent to conduct an evaluation was sent to the parent and the date of parental consent for the evaluation.

(2) Written parental consent for initial and annual placement of a student with disabilities in special education and related services shall be obtained by the local educational agency or

public agency prior to the placement except as provided in subsection (3).

(a) The local educational agency shall maintain written documentation of the date of parental consent for initial or annual placement.

(b) If the parents and local educational agency cannot agree on the IEP but can agree on certain IEP services or interim placement, the student's new IEP would be implemented in the areas of agreement and the student's last agreed-upon IEP would remain in effect in the areas of disagreement until the disagreement is resolved.

(3) Except for initial evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or the student.

(a) When parental consent for initial evaluation or initial placement is refused, the local educational agency or public agency shall informally attempt to obtain consent from the parent before requesting an impartial due process hearing, under ARM 10.16.2401 through 10.16.2417, to determine if the student may be initially evaluated or initially provided special education and related services without parental consent.

(i) If the hearing officer upholds the local educational agency or public agency, the local educational agency or public agency may initially evaluate or initially provide special education and related services to the student without parental consent subject to the parent's right to bring a civil action.

(b) When parental consent for annual placement has not been obtained after following procedures in ARM 10.16.1213 and 10.16.2709 and has not been specifically refused or revoked, the local educational agency or public agency shall informally attempt to obtain consent from the parent.

(i) If parental consent cannot be obtained within a reasonable time, the local educational agency or public agency shall send written notice to the parent requesting approval and stating that the student with disabilities shall be provided special education and related services according to the student's individualized education program (IEP) as developed by the local educational agency 15 days from the date of the notice.

(ii) If no response from the parent is obtained, the local educational agency or public agency shall provide the student special education and related services according to the student's IEP without parent consent subject to the parent's right to an impartial due process hearing under ARM 10.16.2401 through 10.16.2417.

(c) When parental consent for annual placement is refused or revoked, the local educational agency or public agency shall informally attempt to obtain consent from the parent before requesting an impartial due process hearing under ARM 10.16.2401 through 10.16.2417.

(d) A parent may revoke consent at any time. If the parent revokes consent, the parent and the local educational agency have the right to due process procedures under ARM 10.16.2401 through 10.16.2417. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.2709—Parental Involvement in Individualized Educational Program (IEP) Meeting

(1) Each local educational agency or public agency shall take steps to ensure that one or both of the parents of a student with a disability are present at the individualized educational program (IEP) meeting or are afforded the opportunity to participate in the IEP meeting including:

(a) notifying the parent of the meeting early enough to ensure that they will have an opportunity to attend; and

(b) scheduling the meeting at a mutually agreed upon date, time and place.

(i) The notice for an IEP meeting shall include information about the purpose, time and location of the meeting and who will be in attendance.

(ii) If the purpose of the IEP meeting includes the consideration of transition services for a student, the notice must also indicate this purpose and that the agency will invite the student and a representative of any other agency that will be involved in transition planning.

(2) An IEP meeting may be conducted without a parent in attendance if the local educational agency or public agency is unable to convince the parent to attend.

(a) If neither parent can attend the IEP meeting, the local educational agency or public agency shall use other methods of ensuring parent participation, including individual or conference telephone calls, personal contact or written correspondence.

(b) The local educational agency must maintain documentation in the special education record demonstrating a reasonable effort in attempting to convince the parent to attend the IEP meeting including detailed records of telephone calls or visits made to the parent and copies of correspondence to the parent and responses received.

(c) The local educational agency or public agency shall take steps to ensure that the parent understands the proceedings at the IEP meeting.

(d) Upon request by the parent, the local educational agency or public agency shall give the parent a copy of the individualized education program (IEP). (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

Independent Evaluation

34 CFR 300.503—Independent educational evaluation

(a) *General.* (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

(3) For the purposes of this part:

(i) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.

(ii) "Public expense" means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with §300.301.

(b) *Parent right to evaluation at public expense.* A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a hearing under §300.506 to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(c) *Parent initiated evaluations.* If the parent obtains an independent educational evaluation at private expense, the results of the evaluation—

(1) Must be considered by the public agency in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented as evidence at a hearing under this subpart regarding that child.

(d) *Requests for evaluations by hearing officers.* If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) *Agency criteria.* Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the public agency uses when it initiates an evaluation.

(Authority: 20 U.S.C. 1415(b)(1)(A))

10.16.1102—Independent Educational Evaluation

(1) In accordance with 34 CFR 300.503, incorporated by reference, which can be obtained from the Office of Public Instruction, PO Box 202501, Helena, Montana 59620-2501, parents shall have the right to an independent educational evaluation of their child at public expense if the parents disagree with the local educational agency's or public agency's educational evaluation. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 8/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82; AMD, 1983 MAR p. 1668, Eff. 11/11/83; AMD, 1993 MAR p. 1913, Eff. 8/13/93.)

Stay Put

34 CFR 300.513—Child's status during proceedings

(a) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

(Authority: 20 U.S.C. 1415(e)(3))

Note: Section 300.513 does not permit a child's placement to be changed during a complaint proceeding, unless the parents and agency agree otherwise. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others.

10.16.2710—Student's Status During Proceedings

(1) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.

(a) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

Suspension/Expulsion

Montana Statutes for Special Education

20-5-201. Duties and sanctions. (1) A pupil shall:

(a) comply with the policies of the trustees and the rules of the school that the pupil attends;

(b) pursue the required course of instruction;

(c) submit to the authority of the teachers, principal, and district superintendent of the district; and

(d) be subject to the control and authority of the teachers, principal, and district superintendent while the pupil is in school or on school premises, on the way to and from school, or during intermission or recess.

(2) A pupil who continually and willfully disobeys the provisions of this section, shows open defiance of the authority vested in school personnel by this section, defaces or damages any school building, school grounds, furniture, equipment, book belonging to the district, or harms or threatens to harm another person or the person's property is liable for punishment, suspension, or expulsion under the provisions of this title. When a pupil defaces or damages school property the pupil's parent or guardian is liable for the cost of repair or replacement upon the complaint of the teacher, principal, superintendent, or any trustee and the proof of any damage.

(3) In addition to the sanctions prescribed in this section, the trustees of a high school district may deny a high school pupil the honor of participating in the graduation exercise or exclude a high school pupil from participating in school activities. The trustees may not take action under this subsection until the incident or infraction causing the consideration has been investigated and the trustees have determined that the high school pupil was involved in the incident or infraction.

(4) (a) A school district may withhold the grades, diploma, or transcripts of a pupil who is responsible for the cost of school materials or the loss or damage of school property until the pupil or the pupil's parent or guardian satisfies the obligation.

(b) A school district that decides to withhold a pupil's grades, diploma, or transcripts from the pupil and the pupil's parent or guardian pursuant to subsection (4)(a) shall:

(i) upon receiving notice that the pupil has transferred to another school district in the state, notify the pupil's parent or guardian in writing that the school district to which the pupil has transferred will be requested to withhold the pupil's grades, diploma, or transcripts until any obligation has been satisfied;

(ii) forward appropriate grades or transcripts to the school to which the pupil has transferred;

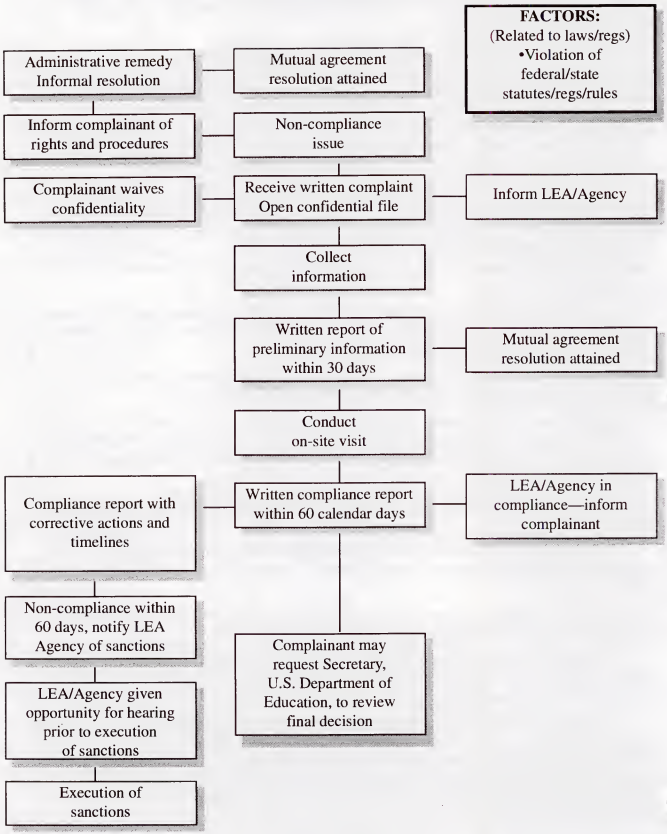
(iii) at the same time, notify the school district of any financial obligation of the pupil and request the withholding of the pupil's grades, diploma, or transcripts until any obligations are met;

(iv) when the pupil or the pupil's parent or guardian satisfies the obligation, inform the school district to which the pupil has transferred; and

(v) adopt a policy regarding a process for a pupil or the pupil's parent or guardian to appeal the school district's decision to request that another school district withhold a pupil's grades, diploma, or transcripts.

(c) Upon receiving notice that a school district has requested the withholding of the grades, diploma, or transcripts of a pupil under this subsection (4), a school district to which the pupil has transferred shall withhold the grades, diploma, or transcripts of the pupil until it receives notice, from the district that initiated the decision, that the decision has been rescinded under the terms of subsection (4)(a). (History: En. 75-6310 by Sec. 123, Ch. 5, L. 1971; R.C.M. 1947, 75-6310; AMD. Sec. 1, Ch. 403, L. 1993.)

Complaint Process


FACTORS:
(Related to laws/regs)
•Violation of federal/state statutes/regs/rules
Administrative remedy Informal resolution
Mutual agreement resolution attained
Inform complainant of rights and procedures
Non-compliance issue
Complainant waives confidentiality
Receive written complaint Open confidential file
Inform LEA/Agency
Collect information
Written report of preliminary information within 30 days
Mutual agreement resolution attained
Conduct on-site visit
Compliance report with corrective actions and timelines
Written compliance report within 60 calendar days
LEA/Agency in compliance—inform complainant
Non-compliance within 60 days, notify LEA Agency of sanctions
Complainant may request Secretary, U.S. Department of Education, to review final decision
LEA/Agency given opportunity for hearing prior to execution of sanctions
Execution of sanctions

20-5-202. Suspension and expulsion. As provided in 20-4-302, 20-4-402, and 20-4-403, any pupil may be suspended by a teacher, superintendent, or principal. The trustees of the district shall adopt a policy defining the authority and procedure to be used by a teacher, superintendent, or principal in suspending a pupil and to define the circumstances and procedures by which the trustees may expel a pupil. Expulsion shall be a disciplinary action available only to the trustees. (History: En. 7506311 by Sec. 124, Ch. 5, L. 1971; R.C.M. 1947, 75-6311; AMD. Sec. 4, Ch. 135, L. 1981.)

10.16.2711—Student's Status During Exclusion from School

(1) The local educational agency may suspend a student with disabilities provided that the length of the suspension is no more than 10 consecutive days or a series of suspensions which does not constitute a significant change in placement. The local educational agency shall consider the length of each suspension, the proximity of the suspensions to one another, and the total amount of time the student is excluded from school.

(a) Exclusion from school which constitutes a significant change in placement as defined in subsection (1) may occur only if the local educational agency and parent agree to the change in placement or a court of competent jurisdiction grants appropriate relief.

(b) If the student is excluded from school under subsection (a) above for more than 10 consecutive days, the local educational agency must ensure that the student with disabilities receives special education and related services in accordance with the individualized education program. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

Complaints

10.16.1108—Opportunity to Present Complaints

(1) The superintendent of public instruction has established the following procedures to provide for the filing of complaints by individuals or organizations alleging that a Montana local educational agency has failed to provide a student with disabilities a free appropriate public education.

(2) Whenever a complaint has been received with respect to any matter relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education for a qualified student, the complainant may request an impartial due process hearing in accordance with ARM 10.16.2401 through 10.16.2417.

(3) If the complainant alleges the notice provided by the local educational or public agency was not adequate under 34 CFR 300.505, the state compliance officer shall investigate the allegations and if the findings support a conclusion that the notice was inadequate, shall order the issuance of a notice in compliance with that section. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82; AMD, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1110—State Complaint Procedures

(1) An organization or individual may file a written signed complaint that the local educational or public agency is violating the Individuals with Disabilities Education Act (20 USC, Sections 1401-1485) or its implementing regulations (34 CFR Part 300), the Montana statutes pertaining to special education (MCA Title 20, Chapter 7, Part 4) or the administrative rules promulgated by the superintendent of public instruction governing special education (ARM Title 10, chapter 16).

(2) The complaint must include:

(a) A statement that the local educational or public agency has violated a requirement of a federal or state statute, regulation or rule that applies to a student with disabilities or special education.

(b) The facts on which the statement is based.

(3) The complaint must be filed with the Compliance Officer, Office of Public Instruction, PO Box 202501, Helena, Montana 59620-2501.

(4) Upon receipt of the written complaint, the compliance officer shall send written notification to the local education agency and/or the public agency named in the complaint that a complaint has been filed, conduct an appropriate investigation of the allegations and prepare a final report stating the findings and conclusions of the compliance officer. The complaint, investigative records and the final report shall be filed in a confidential file retained by the compliance officer.

(a) If the complaint addresses matters listed in ARM 10.16.1108, the complainant shall be informed of the right to secure a hearing under the provisions of special education due process procedural rules under ARM 10.16.2401 through 10.16.2417. The complainant will be notified that unless s/he requests that their names not be released to the local educational agency, the local educational agency will be notified of the name of the person(s) filing the complaint.

(b) The compliance officer shall send written notice to the named local educational or public agency which includes information about the nature of the allegations in the complaint within 10 days of receipt of the complaint.

(i) The compliance officer shall request the local educational or public agency to file its written response to the allegations within 15 days of receipt of the written notice of filing of complaint by the compliance officer.

(ii) The local educational or public agency may request a 10-day extension of the 15-day period. The compliance officer may grant an extension of 10 days if the local educational or

public agency has shown good cause exists.

(iii) The complainant will be given the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint and the local educational or public agency's response to the complaint.

(c) The compliance officer shall write a preliminary report in regard to the investigation of the complaint and forward a copy to the local educational or public agency and the complainant within 30 days of the receipt of the complaint. If an on-site investigation has not been conducted within that 30-day period, the report will indicate whether an on-site investigation is required and inform the local educational or public agency of the date of such investigation. The preliminary report will inform the complainant of the opportunity to submit additional information, either orally or in writing about the allegations in the complaint.

(d) Following an appropriate investigation, the compliance officer shall review all relevant information and make an independent determination as to whether the local educational or public agency is violating a requirement of federal or state statute, regulation or rule concerning the provision of a free appropriate public education to a student with disabilities. The compliance officer shall write a final report within 60 days of receipt of the complaint unless an extension of the 60-day period is required by exceptional circumstances which exist with respect to the particular complaint. The final report will address each allegation in the complaint and state findings of fact and legal conclusions, if required. If the compliance officer concludes that an allegation is true and that corrective action is required to comply with federal or state law, the compliance officer will order the corrective action and shall include timelines for implementation of such action. The office of public instruction will provide technical assistance at the request of the local educational or public agency.

(e) At any time during this process, if the compliance officer determines that the complaint has been resolved and compliance is achieved, the compliance officer shall inform the complainant and the local educational or public agency of that fact in writing. The complainant shall be given an opportunity to respond before the complaint is considered closed.

(f) If the complainant disagrees with the decision of the compliance officer, the complainant may request that the Secretary, U.S. Department of Education, Federal Office Building, 400 Maryland Ave. SW, Washington, DC 20202, review the decision.

(g) If within 60 days of issuance of the final report, the local educational or public agency has not implemented the corrective action required by the final report, the office of public instruction shall take appropriate sanctions against the local educational or public agency. Such sanctions may include:

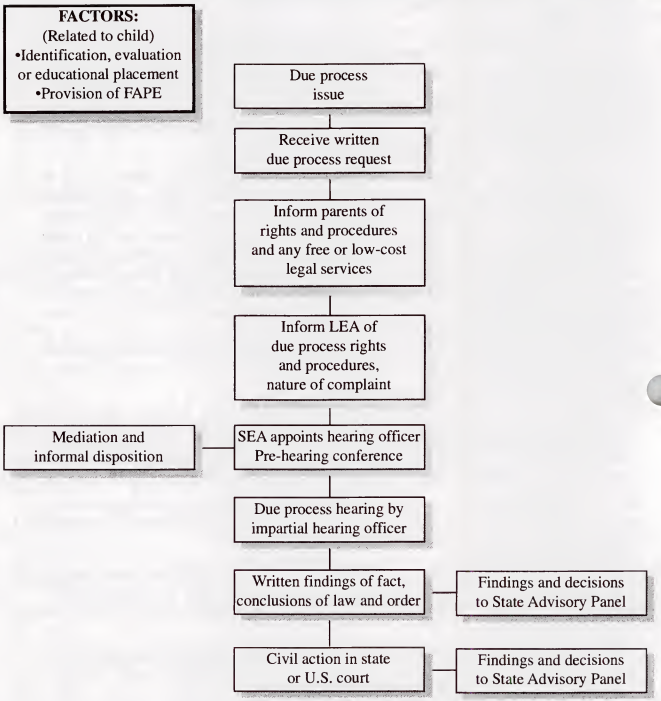
(i) recommending to the board of public education withholding state education funds;

(ii) denial in whole or part IDEA-B federal funds; or

(iii) recommending to the board of public education a change in accreditation status.

(h) If the local educational or public agency alleges that the state education agency has violated a state or federal special education statute, regulation or rule in ordering the corrective action required by the final report, the state education agency shall provide the local educational or public agency with a hearing in accordance with 34 CFR 76.401(c)(2) through (7), and the Montana Administrative Procedure Act, Sections 2-4-601 through 2-4-711, MCA, prior to imple-

Due Process


FACTORS:
(Related to child)
•Identification, evaluation or educational placement
•Provision of FAPE
Due process issue
Receive written due process request
Inform parents of rights and procedures and any free or low-cost legal services
Inform LEA of due process rights and procedures, nature of complaint
Mediation and informal disposition
SEA appoints hearing officer
Pre-hearing conference
Due process hearing by impartial hearing officer
Written findings of fact, conclusions of law and order
Findings and decisions to State Advisory Panel
Civil action in state or U.S. court
Findings and decisions to State Advisory Panel

menting sanctions. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1984 MAR p. 817, Eff. 5/18/84; AMD, 1993 MAR p. 1913, Eff. 8/13/93.)

Due Process

Board of Public Education Rules

10.60.102—Due Process in Services

(1) Special education services shall include the provision of due process to ensure the rights of children with disabilities. The goal of due process is to prevent harm to children, parents and society. Due process shall include protection regarding the following:

(a) identification of disability;

(b) development of education program;

(c) placement with the education program; and

(d) annual review of education program and placement.

(History: Sec. 20-2-121, MCA; IMP, Sec. 20-7-402, MCA; eff. 8/10/77; AMD, 1978 MAR p. 998, Eff. 7/15/78.)

10.16.2401—Scope of Rules

(1) These rules govern the procedure for conducting all due process hearings concerning and arising from the education of students with disabilities in this state. All rules promulgated by former state superintendents of public instruction with regard to special education due process hearings contrary to these rules are hereby repealed. (History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.2402—Initiating Special Education Due Process

(1) Impartial due process matters involving educating students with disabilities may be initiated by a parent, legal guardian or surrogate parent of a student with disabilities if the parent disagrees with a decision of a school district for which notice to parents is required.

(2) Impartial due process hearings involving educating students with disabilities may be initiated by a school district board of trustees or governing authority of the state-operated facility when, after reasonable efforts at mediation, a parent, legal guardian or surrogate parent either

fails to provide a written parental consent for a proposed educational action, or provides a formal disapproval of education actions. A hearing may also be initiated by a school district board of trustees to show that its educational evaluation is appropriate whenever an independent evaluation is requested by the parent, legal guardian or surrogate parent.

(3) A request for an impartial due process hearing involving the education or possible identification of a student with disabilities shall be made in writing to the State Superintendent of Public Instruction, PO Box 202501, Helena, Montana 59620-2501, and include a short, plain statement of matters asserted. (History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.2403—Special Education Due Process Hearing Procedures

(1) Upon receipt by the state superintendent of public instruction of a written request for a due process hearing involving a special education controversy, the state superintendent of public instruction shall:

(a) Promptly advise the board of trustees and parent, legal guardian or surrogate parent of the request for due process hearing.

(b) Provide the board of trustees up to and including 10 calendar days in which to address the special education controversy in the school district, and reach a final decision. (These 10 days are counted as part of the 45-day period allowed for the issuance of the final order in a due process hearing. See ARM 10.16.2417). Pending the final decision of the board of trustees or upon mutual agreement of the parties, the state superintendent of public instruction shall provide mediation so long as both parties voluntarily and freely agree to the mediation. The mediation conference is an attempt to resolve the differences and, if possible, avoid a due process hearing. The mediation shall:

(i) be an intervening, informal process conducted in a non-adversarial atmosphere; and

(ii) not be used to deny or delay an aggrieved party their rights to a hearing.

(c) Appoint an impartial hearing officer to conduct a due process hearing.

(i) The state superintendent of public instruction shall maintain a list of persons who serve as impartial hearing officers.

(ii) Selection of impartial hearing officer:

(A) Upon receiving a copy of the request for hearing, the state superintendent of public instruction shall mail to each party a list of five proposed impartial hearing officers together with a summary of their qualifications.

(B) A party shall have seven days to study the list, cross off any two names objected to, number the remaining names in order of preference, and return the list to the state superintendent of public instruction. Requests for more information about proposed impartial hearing officers must be directed to the superintendent of public instruction. Unless good cause is shown, this request for more information does not extend the seven day response time. (These seven days

are counted as part of the 45-day period allowed for the issuance of the final order in a due process hearing. See ARM 10.16.2417).

(C) If, despite efforts to arrive at a mutually agreeable choice, the parties cannot agree upon an impartial hearing officer, the state superintendent of public instruction shall make the appointment.

(D) Notwithstanding the foregoing provisions, the parties may mutually select the impartial hearing officer from the list provided by the state superintendent of public instruction.

(iii) Disqualification:

(A) A hearing may not be conducted by a person who is an employee of a school district or other public agency which is involved in the education or care of the child, or who has a personal or professional interest which would conflict with his or her objectivity in the conduct or review of the hearing.

(B) A person who otherwise is qualified to conduct a hearing under paragraph (A) of this subsection is not an employee solely because he or she is paid by contract by the public agency to serve as impartial hearing officer.

(2) An impartial hearing officer may at any point withdraw from consideration or from service in any hearing in which the impartial hearing officer believes a personal or professional bias or interest on any of the issues to be decided in the hearing exists which might conflict with the impartial hearing officer's objectivity. Such written request to withdraw shall be directed to the state superintendent of public instruction. Any subsequent appointment of an impartial hearing officer shall be conducted as provided above. (History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90.)

10.16.2404—Notice of Hearing

(1) The impartial hearing officer shall, within 10 days of receipt of notice of appointment by the state superintendent of public instruction, schedule a prehearing conference pursuant to ARM 10.16.2406. The impartial hearing officer shall inform the parties of all future proceedings in this matter. The notice of hearing shall include:

(a) a statement of the time, place and nature of the hearing;

(b) references to the specific statutes and rules involved available at that time;

(c) a provision advising the parties of their right to be represented by counsel at the hearing;

(d) a provision informing the parent of any free or low-cost legal and other relevant services available in the area; and

(e) a statement of issues and matters to be discussed at the hearing.

(2) The notice of hearing shall be sent by certified mail to all parties.

(3) If the impartial hearing officer does not have details of the issues and matters to be discussed at the time of issuing the notice of hearing, a party or impartial hearing officer may

later demand a more detailed account of the issues and matters to be discussed. The dates scheduled by the impartial hearing officer in the notice of hearing may be continued by the impartial hearing officer to such a convenient date as stipulated by the parties and approved by the impartial hearing officer.

(a) The notice of hearing, as well as all communications conducted in the hearing, shall be written in language understandable to the general public and in the native language of the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication is not written language, the impartial hearing officer shall direct the notice to be translated orally or by other means to the parent in his/her native language or other means of communication. (History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90.)

10.16.2405—Conference and Informal Disposition

(1) The impartial hearing officer may informally confer with the parties to the request for impartial due process hearing for the purpose of attempting informal disposition of any special education controversy.

(2) This conference of informal disposition may occur at any time prior to the issuing of the final findings of fact, conclusions of law and order of the impartial hearing officer. The parties may informally confer to resolve the special education controversy by stipulation, agreed settlement, consent order, or default. To be effective, any agreement made at such conference must be reduced to writing and signed by all parties. An agreed resolution shall end the proceedings upon formal action of the hearing officer unless a party to the hearing appeals the decision under ARM 10.16.2417.

(3) If it is appropriate, the impartial hearing officer may draft findings of fact, conclusions of law and order and shall promptly send to each party in the special education controversy. (History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.2406—Impartial Hearing Officer's Prehearing—Formulating Issues

(1) The impartial hearing officer shall schedule a prehearing conference to consider:

(a) the simplification of the issues;

(b) the necessity or desirability of amendments to the request for impartial due process hearing;

(c) the possibility of obtaining admissions of fact and documents which will avoid unnecessary proof;

(d) a limitation of the number of expert witnesses; and

(e) such other matters as may aid in the disposition of the action.

(2) The impartial hearing officer shall make an order which recites the action taken at the conference, any amendment to the request for impartial due process hearing, the agreements made by the parties as to any of the matters considered, and which limits the issues for the hearing to those not disposed of by admissions or agreements of the parties. Such order when entered will control the subsequent course of action, unless modified at the hearing to prevent manifest injustice. The impartial hearing officer, in his/her discretion, may establish by rule a prehearing calendar on which actions may be placed for consideration as provided above.

(3) Individual privacy. The impartial hearing officer shall provide for provisions to ensure the privacy of matters before him/her as is required by law. Parents maintain the right to waive their right of confidentiality and privacy in the hearing and to have the hearing be open to the public. The impartial hearing officer shall also provide or allow an opportunity for the student with disabilities to be present at the hearing upon request of the parent, guardian, surrogate parent or the student with disabilities who is the subject of the hearing.

(4) Location of hearing. The imparitial hearing officer shall conduct the hearing at a time and place reasonably convenient to the parent and student. If the parties cannot agree on such time and place, the hearing will be held in the county in which the named school district is located. (History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff 8/13/93.)

10.16.2407—Discovery

(1) The impartial hearing officer may compel, limit or conduct discovery prior to the hearing and/or prehearing conference pursuant to ARM 10.16.2408 through 10.16.2410. (History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90.)

10.16.2408—Discovery Methods

(1) Parties may obtain discovery by one or more of the following methods:

(a) depositions upon oral examination or written questions;

(b) written questions;

(c) production of documents (or things or permission) to enter upon land or property; or

(d) request for admissions.

(2) Any evidence to be introduced at the hearing or on file shall be disclosed to the opposing party at least five days before the hearing or the evidence will not be admitted. (History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.2409—Scope of Discovery

(1) Unless otherwise limited by order of the impartial hearing officer, the scope of discovery is as follows:

(a) in general, parties may obtain discovery regarding any matter not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible items, and the identity and location of persons having knowledge of any discoverable material; and

(b) a party may discover facts known or opinions held by an expert who has been retained or especially employed by another party in anticipation of litigation or preparation for hearing. (History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90.)

10.16.2410—Limitations on Discovery by the Impartial Hearing Officer

(1) Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the impartial hearing officer before whom the action is pending may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(a) that the discovery not be had;

(b) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(c) that the discovery may be had only by a method of discovery other than that selected by the parties seeking discovery;

(d) that certain matters should not be inquired into, or that the scope of the discovery be limited to certain matters; or

(e) that discovery be conducted with no one present except persons designated by the impartial hearing officer. (History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90.)

10.16.2411—Sequence and Timing of Discovery

(1) The impartial hearing officer shall provide reasonable discovery on the relevant issues for the hearing and shall establish a calendar so that discovery does not delay the hearing. A request for discovery must be made within 15 days of filing the request for impartial due process hearing. (History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90.)

10.16.2412—Ability of Cross-Examination or Participation in the Hearing

(1) The right to examine, cross-examine or to participate as a party in this action shall be limited to the attorneys, the lay advocates with special knowledge or training with respect to the problems of children with disabilities who accompany and advise a particular party named in the matter, the particular parties named in the matter, and the impartial hearing officer. (History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90.)

10.16.2413—Ex-Parte Consultations

(1) The impartial hearing officer, after the issuance of the notice of hearing, shall not communicate with any party in connection with any issue of fact or law in such case except upon notice and opportunity for all parties to participate. (History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90.)

10.16.2414—Powers of the Impartial Hearing Officer

(1) The impartial hearing officer may:

(a) administer oaths;

(b) issue subpoenas;

(c) provide for the taking of testimony by depositions;

(d) set the time and place of the hearing and direct parties to appear and confer to consider simplifications of the issues by consent of the parties involved;

(e) fix the time for filing of briefs or other documents; and

(f) request the submission of proposed findings of facts and conclusions of law at the conclusion of the hearing.

(2) The impartial hearing officer shall be bound by common law and the Montana Rules of Evidence. All evidence and objections to evidence shall be noted in the record:

(a) any part of the evidence may be received in written form; and

(b) documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the impartial hearing officer's specialized knowledge. (History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90.)

10.16.2415—Hearing

(1) The hearing will be conducted before the impartial hearing officer in the following order:

(a) statement and evidence of the petitioner or other party in support of its action;

(b) statement and evidence of the respondent in support of its action;

(c) rebuttal testimony; and

(d) closing arguments beginning with petitioner and ending with respondent.

(2) The order of procedure may be changed by order of the impartial hearing officer upon a showing of good cause.

(3) Each party shall have the right to conduct cross-examinations for a full and true disclosure of the facts, including the right to cross-examine the authority of any document prepared by or on behalf of or for the use of all parties and offered into evidence. All testimony shall be given under oath or affirmation. (History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90.)

10.16.2416—Record

(1) The record in the impartial due process hearing shall include:

(a) all pleadings, motions, intermediate ruling;

(b) all evidence received plus a stenographic record of oral proceeding;

(c) a statement of matters officially noticed;

(d) questions and offers of proof, objections and proceedings thereon;

(e) proposed findings and exceptions; and

(f) findings of fact, conclusions of law and order by the impartial hearing officer.

(2) Any party to a hearing has the right to obtain written or electronic verbatim record of the hearings. A transcript of the impartial due process hearing shall be taken by a certified court reporter and transcribed and made available upon request of either party to the hearing. The state superintendent of public instruction will pay costs associated with the transcription of the record taken by the court reporter. (History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.2417—Final Order on Special Education Due Process Hearing Decisions

(1) The impartial due process hearing officer shall render, in writing, findings of fact and conclusions of law separately stated and an order concerning all matters at issue in the hearing

within 45 days of the state superintendent of public instruction's receipt of the request for hearing unless an extension of time has been granted by the impartial hearing officer. The impartial hearing officer may grant a request by either party for a specific extension of the 45-day period allowed for rendering a final order. The hearing officer shall mail, or personally deliver, a written copy of the findings of fact, conclusions of law and order to each of the parties and to the state superintendent of public instruction. The hearing officer shall also mail or deliver the record as defined in ARM 10.16.2416 to the state superintendent of public instruction.

(2) In the event the impartial hearing officer has granted a written request from a party to extend the 45-day period in which to render a final decision, the impartial hearing officer shall notify the state superintendent of public instruction when the decision is due. In the event the decision is not rendered within 90 days from the date the request for impartial due process hearing was filed with the state superintendent of public instruction, the state superintendent of public instruction may remove the impartial hearing officer and appoint another impartial hearing officer.

(3) The impartial hearing officer may order reimbursement for parents for the unilateral placement of their child if the school district's placement is determined to be inappropriate and the parent's placement is deemed appropriate.

(4) The decision of the impartial hearing officer shall be binding upon both parties unless the decision is appealed.

(5) Any party who feels aggrieved by the findings and decision of the impartial hearing officer may appeal to a district court or may bring a civil action under 20 U.S.C. 1415(e)(2) of the Individuals with Disabilities Education Act.

(6) The state superintendent of public instruction shall only be responsible for paying administrative costs related to the hearing, including necessary expenses incurred by the impartial hearing officer and stenographic services. The parties involved shall each be responsible for any legal or other fees that incur.

(7) Every party to a controversy shall comply with these rules of procedure. Failure of one party to do what is required and which substantially prejudices the proceedings may necessitate a request by the impartial hearing officer of a court order for compliance.

(8) In the event that parents of a child with disabilities prevail, a court of competent jurisdiction, in its discretion, may award reasonable attorney's fees as part of the costs to the parents. The awarding of attorney's fees is subject to the limitations found under 20 U.S.C 1415(e)(4) of the Individuals with Disabilities Education Act.

(9) The office of public instruction, after deleting any personally identifiable information, shall transmit those findings and decisions to the state special education advisory panel and make those findings and decisions available to the public. (History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-402, MCA; NEW, 1990 MAR p. 934, Eff. 5/18/90; AMD, 1993 MAR p. 1913, Eff. 8/13/93.)

Confidentiality of Information

34 CFR 300.502—Opportunity to examine records

The parents of a child with a disability shall be afforded, in accordance with the procedures of §§300.562-300.569, an opportunity to inspect and review all education records with respect to—

(a) The identification, evaluation, and educational placement of the child; and

(b) The provision of FAPE to the child.

(Authority: 20 U.S.C. 1415(b)(1)(A))

Accreditation Standard

10.55.2003—Special Education Records

(1) A separate records file shall be maintained for each student receiving special education and/or related services. As a minimum, each record will contain the materials required by federal and state special education laws.

(2) Records will be maintained in a secure and confidential manner.

(3) The board of trustees shall establish written procedures for the destruction of confidential records. Records are to be kept for a minimum of five years after termination of special education services. (History: Sec. 20-2-114 MCA; IMP, Sec. 20-2-121 MCA; NEW, 1989 MAR p. 342, Eff. 7/1/89.)

10.16.1001—Special Education Requirements

(1) School records and confidentiality of information must follow the provisions under the Family Educational Rights and Privacy Act (FERPA), and its implementing regulations at 34 Code of Federal Regulations (CFR) Part 99, and must follow the provisions established for special education under the Individuals with Disabilities Education Act (IDEA), and its implementing regulations at 34 CFR 500.560 through 34 CFR 500.576. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 282, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1004—Special Education Records

(1) Special education records means all personally identifiable information which is directly related to a student and is collected and maintained by the local educational agency or by a person acting for such agency or program for the purpose of implementing IDEA.

(a) For the purposes of this section, education records include records, files, documents and other materials such as handwritten notes, computer printouts, audio and video tape, film or microfiche which are personally identifiable.

(b) For the purposes of this section, education records does not include:

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the records and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

(ii) records of law enforcement unit of an educational agency which are maintained apart from education records;

(iii) records related to an individual who is employed by the local educational agency or state-operated program; or

(iv) records identified by the local educational agency as directory information.

(2) Each special education record shall include access log, referral, permission for evaluation, evaluation data including summaries of assessments, test protocols and other information that are not subject to sole possession requirements of FERPA, child study team reports, individualized education programs, and periodic reviews of the individualized education program.

(3) Only authorized school officials determined by the LEA to have legitimate educational interests in accord with the Family Educational Rights and Privacy Act (FERPA) shall have access to special education records. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1005—Parental Consent for Records

(1) Parental consent must be obtained before personally identifiable information is disclosed to anyone other than authorized school officials of the local educational agency collecting or using the information under these rules or used for any purpose other than meeting a requirement under IDEA. The local educational agency may not release information from special education records to local educational agencies without parental consent unless authorized to do so under FERPA or these rules.

(2) A local educational agency may disclose personally identifiable information from the special education records of a student without written parent consent if the disclosure is to authorized school officials or to officials of another local educational agency or state-operated program in which the student seeks or intends to enroll subject to the following:

(a) the local educational agency makes a reasonable attempt to notify the parent of the transfer of records except when the transfer is initiated by the parent; or

(b) the local educational agency has a policy that special education records are forwarded within five days upon written request to a local educational agency in which the student seeks or intends to enroll.

(3) A local educational agency may disclose personally identifiable information from the special education records of a student only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior written consent of the parent except as provided for in FERPA.

(4) In the event that parents refuse to consent, the local educational agency may request an impartial due process hearing in accordance with ARM 10.16.2401 through 10.16.2417 to resolve the controversy. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

34 CFR 300.562—Access rights

(a) Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes—

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

34 CFR 300.563—Record of access

Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under this part (except access by parents and authorized employ-

ees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

34 CFR 300.564—Records on more than one child

If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(Authority: 20 U.S.C. 1412(2)(D)); 1417(c))

34 CFR 300.565—List of types and locations of information

Each participating agency shall provide parents, on request, a list of the types and locations of education records collected, maintained, or used by the agency.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

34 CFR 300.566—Fees

(a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

34 CFR 300.567—Amendment of records at parent's request

(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal, and advise the parent of the right to a hearing under §300.568.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

34 CFR 300.568—Opportunity for a hearing

The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

34 CFR 300.569—Result of hearing

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy of other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must—

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

34 CFR 300.570—Hearing procedures

(1) A hearing held under §300.568 must be conducted according to the procedures under §99.23 of this title.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

34 CFR 300.571—Consent

(a) Parental consent must be obtained before personally identifiable information is—

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or

(2) Used for any purpose other than meeting a requirement of this part.

(b) An educational agency or institution subject to Part 99 of this title may not release information from education records to participating agencies without parental consent unless authorized to do so under Part 99 of this title.

(c) The SEA shall include policies and procedures in its State plan that are used in the event that a parent refuses to provide consent under this section.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

34 CFR 300.572—Safeguards

(a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.129 and Part 99 of this title.

(d) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

34 CFR 300.573—Destruction of information

(a) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

Note: Under §300.573, the personally identifiable information on a child with a disability may be retained permanently unless the parents request that it be destroyed. Destruction of records is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. In informing parents about their rights under this section, the agency should remind them that the records may be needed by the child or the parents for social security benefits or other purposes. If the parents request that the information be destroyed, the agency may retain the information in paragraph (b) of this section.

10.56.101(6)—Student Assessment

(6) Full-time special education students shall not be required to participate in the norm-referenced testing program. Those students receiving only special education instruction in any of those tested academic areas shall not be required to participate in that section of the test for which they receive exclusive special education instruction. (History: Sec. 20-2-121 MCA; IMP, Sec. 20-2-121 MCA; NEW, 1988 MAR p. 1993 MAR p. 683, Eff. 4/30/93.)

PART V

SPECIAL EDUCATION PROCESS

Identification and Location

Board of Public Education Rules

10.60.103—Identification of Children with Disabilities

(1) In order that a free appropriate public education be provided all children, all persons who can assist in identifying the disability and determine services to meet the needs of a child shall participate in the placement process.

(2) Child study teams shall be used to identify children with disabilities, and instructional teams shall be used to plan individual education programs. Parents shall be involved in the child study team process and shall be included in the development of the individual education plan.

(3) To assure correct identification of disabilities and proper educational placement, children shall have the opportunity for a comprehensive evaluation. (History: Sec. 20-2-121, MCA; IMP, Sec. 20-7-402, MCA; Eff. 8/10/77; AMD, 1978 MAR p. 998, Eff. 7/15/78.)

10.16.1112—Referral

(1) A local educational agency shall establish a referral process which includes a method for collecting information to determine whether comprehensive educational evaluation is necessary and the types of evaluations warranted.

(a) The referral must include a statement of the reasons for referral, a description of any options the local educational agency considered, including documentation of regular education interventions and the reasons why those options were rejected, and the signature of the person making the referral.

(b) Referral shall document the suspicion that the student may have a disability which adversely affects the student's educational performance to the degree which requires special education and related services.

(c) If a comprehensive educational evaluation is warranted, the local educational agency shall obtain consent of the parent before conducting a comprehensive educational evaluation.

Steps in the Special Education Process
1 Referral to Special Education
2 Permission for Evaluation
3 Individualized Education Evaluation
4 Child Study Team (CST) Meeting
5 Individualized Education Program (IEP) Meeting
6 IEP Review and Re-evaluation
7 Implementation of the IEP

(2) If, after receiving a referral, a child study team determines that a comprehensive evaluation is not necessary, the local educational agency shall notify the parent in writing of its decision, including a description of any options the local educational agency considered and the reasons why those options were rejected and a full explanation of all of the procedural safeguards available under Subpart E of IDEA. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

Evaluation

10.16.1113—Comprehensive Educational Evaluation Process

(1) Before any action is taken with respect to the initial placement of a student with disabilities in a special education program, a full and individual evaluation of the student's educational needs must be conducted in accordance with the requirements of ARM 10.16.1101.

(2) An evaluation based on procedures required in subsection (1) of this rule shall be conducted at least every three years or more frequently if conditions warrant or if the student's parent or teacher requests an evaluation.

(3) Before conducting an initial comprehensive educational evaluation, the local educational agency shall obtain written parental consent according to ARM 10.16.2708.

(4) In interpreting evaluation data and in making program decisions, the child study team shall:

(a) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

(b) Ensure that information obtained from all of these sources is documented on the child study team report and carefully considered;

(c) Ensure that decisions made by the child study team include persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and

(d) Ensure that program decisions are made in conformity with the least restrictive environment requirements.

(5) The child study team shall determine whether the evaluation is adequate and whether the student has a disability which adversely affects the student's educational performance and because of that disability needs special education.

(6) The child study team shall prepare a written report of the results of the evaluation. The report shall include a summary statement of the basis for making the determination that the student has a disability and needs special education and related services. Each local educational agency team member shall certify in writing whether the report reflects his or her conclusion. If

it does not reflect his or her conclusion, the team member shall submit a separate statement presenting his or her conclusions. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1106—Protection from Use of Diagnostic Category for Placement Purposes

(1) The child study team shall identify a disability category for each student with a disability following comprehensive evaluation. The disability category shall relate to various disabilities defined in Section 20-7-401, MCA. The disability category is to be used for reports required by the office of public instruction. A local educational agency or public agency should not refer to students, teachers or rooms by category of disability, as such practices do not facilitate education and are often harmful to the student with a disability. Parents shall be informed of the disability category as it relates to their child. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1993 MAR p. 1913, Eff. 8/13/93.)

(Rule 10.16.1204 duplicates rule 10.16.1114 and will be repealed.)

10.16.1114—Composition of a Child Study Team

(1) The evaluation is made by the multidisciplinary child study team that includes the following members:

(a) A local educational agency principal or administrative designee who has authority to provide or supervise the provision of special education services:

(i) if the local educational agency does not employ a principal, the county school superintendent or special education cooperative director.

(b) The student's regular education teacher:

(i) if the student has more than one regular education teacher, one of the regular education teachers or a school counselor may represent the teachers;

(ii) if the student is not enrolled in public school, a regular education teacher who teaches grades or subjects appropriate for the student's age; and

(iii) if the student is age 5 and not enrolled in public school, the regular education teacher shall be a teacher with elementary education endorsement. If the student is age 3 or 4, a regular education teacher is not required to participate.

(c) The student's special education teacher when the student is already receiving special education:

(i) if the student is not receiving special education, the special education teacher who will be most likely to serve the student in the event that the student needs special education services shall be appointed; and

(ii) if the student is suspected of having a speech/language impairment, the special education teacher may be the speech/language pathologist.

(d) one or both of the student's parents.

(e) the student, where appropriate.

(f) when the student is enrolled in a private school, a representative from the private school; and

(g) at least one teacher or other specialist with knowledge in the area of suspected disability. For specific disabilities, the following specialists or teachers are required:

(i) serious emotional disturbance or specific learning disability or cognitive delay; a school psychologist.

(ii) speech/language impairment, deaf/blindness, traumatic brain injury; a speech/language pathologist;

(iii) autism; a school psychologist and speech/language pathologist; and

(iv) deafness or hearing impairment; a speech/language pathologist or audiologist.

(2) The local educational agency shall invite other specialists when such specialists are needed to complete a comprehensive evaluation. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; AMD, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1101—Protection in Evaluation Procedures

(1) Each local educational agency shall establish and implement procedures to ensure that testing and evaluation materials and procedures used for evaluation and placement of students with disabilities are selected and administered so as not to be racially or culturally discriminatory.

(2) Local educational agencies shall ensure, at a minimum, that tests and other evaluation materials:

(a) are provided and administered in the student's native language or other mode of communication, unless it is clearly not feasible to do so;

(b) have been validated for the specific purpose for which they are used;

(c) are administered by trained personnel in conformance with the instructions provided by their producers;

(d) include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(e) are selected and administered so as best to ensure that when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure).

(3) The local educational agency shall ensure that no single procedure is used as the sole criterion for determining eligibility for services and an appropriate educational program for a student.

(4) The student shall be assessed in all areas related to the suspected disability. A comprehensive evaluation means all data needed or that would ordinarily be asked for by a competent professional in the evaluation process.

(5) The child study team report shall document the results of a comprehensive evaluation with a written summary statement of the results of the:

(a) student's vision and hearing screening, including date of the screening and the results;

(b) student's current social and emotional status;

(c) student's current curriculum-based academic performance;

(d) student's current classroom performance in relation to chronological age/grade peers;

(e) observation of student in the student's regular educational setting including behavior relevant to the area of suspected disability noted during the observation of the student and the relationship of that behavior to the student's academic functioning or classroom performance; and

(f) when appropriate, individual assessments of general intelligence, physical health, communicative status, motor abilities, transitional needs and cultural environment.

(6) A supplementary written report of individualized assessments is required in areas related to specific disabilities as follows:

(a) Autism: psycho-educational assessment, including interviews with persons knowledgeable about the student; achievement or academic assessments; adaptive behavior assessments; and speech-language assessments.

(b) Cognitive delay: general cognitive ability assessment, including interviews with persons knowledgeable about the student; achievement or academic assessments; and adaptive behavior assessments.

(c) Child with disabilities: (preschool) developmental assessments or academic and general cognitive ability assessments.

(d) Deafness-blindness: medical or optometric and audiological assessments; speech-language assessments; academic assessments; and adaptive behavior assessments.

(e) Hearing impairment or deafness: medical or audiological assessments; and speech/language assessments.

(f) Orthopedic impairment: medical information relevant to educational performance and access of educational opportunity in the regular educational environment, including assessment of fine and gross motor performance and its affect on vocational education and physical education and achievement or academic assessments.

(g) Other health impairment: medical information relevant to educational performance and access of educational opportunity in the regular educational environment.

(h) Serious emotional disturbance: general cognitive ability assessment, including interviews with persons knowledgeable about the student; achievement or academic assessments; and adaptive behavior assessments.

(i) Specific learning disability: general cognitive ability assessment including interviews with persons knowledgeable about the student; and achievement or academic assessments. Observation:

(i) At least one team member other than a student's regular teacher shall observe the student's academic performance or behavior in the regular classroom setting.

(ii) In the case of the student of less than school age or out of school, a team member shall observe the student in an environment appropriate for a student of that age.

(j) Speech-language impairment: speech/language assessment.

(k) Traumatic brain injury: medical information; psycho-educational assessment, including interviews with persons knowledgeable about the student; achievement or academic assessments; adaptive behavior assessments; and speech-language assessments.

(l) Vision impairment: medical or optometric assessments.

(7) Individuals responsible for preparing a supplementary report of an individualized assessment as part of the comprehensive educational evaluation shall summarize in writing their evaluation results, including identifying procedures and instruments used to gain the data, results obtained, and a statement of recommendations and implications for student's educational program. The summary shall be kept in the student's special education record. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 8/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82; AMD, 1985 MAR p. 110, Eff. 2/1/85; AMD, 1993 MAR p. 1913, Eff. 8/13/93.)

Criteria for Identification of Eligibility

[NOTE: Rules establishing the criteria for Autism, Emotional Disturbance, Other Health Impairment, and Traumatic Brain Injury have not been formally adopted as of the publication of this manual. Draft rules for these disabilities are provided for reference.]

Draft—Criteria for Identification of Student as Having Autism

(1) The student may be identified as having autism if evidence can be gathered to support the existence of a developmental disability that was present before the student was 3 years old and if the student has a communication disability in verbal or nonverbal communication and social interaction.

(2) The student may not be identified as having autism if the student has a hearing impair-

ment, serious emotional disturbance or global cognitive defects in which the student exhibit "autistic-like" behavior.

(AUTH: 20-7-401, 20-7-403, MCA; IMP: 20-7-403, MCA.)

10.16.1115—Criteria for Identification of a Child with Disabilities Age 3-5

(1) A student may be identified as being a child with disabilities if the child is 3, 4, or 5 years old and experiences a severe delay in development. A severe delay in development means:

(a) the child functions at a developmental level two or more standard deviations below the norm in any one area of development or oen and one-half standard deviations below the norm in two or more areas of development; and

(b) the areas of development include one or more of the following areas: cognitive development, physical development, communication development, social and emotional development, or adaptive functioning skills.

(2) The student may not be identified as a child with disabilities if the student's delay in development is due to factors related to environment, economic disadvantage, or cultural difference. (History: Sec. 20-7-402, MCA; IMP, 20-7-401, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1116—Criteria for Identification of Student as Having Cognitive Delay

(1) The student may be identified as having cognitive delay if the student has a significantly subaverage general intellectual functioning and significant deficits in adaptive behavior and educational performance, especially in the area of application of basic academic skills in daily life activities.

(2) General intellectual functioning means performance on a standardized intelligence test that measures general cognitive ability rather than one limited facet of ability.

(a) Significantly subaverage general intellectual functioning is defined as two or more standard deviations below the population mean on a standardized intelligence test. Error in test measurement requires clinical judgment for students who score near two standard deviations below the mean.

(b) The presence of subaverage general intellectual functioning must occur during the developmental period defined as the period of time between conception and the 18th birthday.

(3) Deficits in adaptive behavior is defined as significant limitations in the student's effectiveness in meeting the standards of personal independence, interpersonal communication, and social responsibility expected for the student's age/grade peers and cultural group as measured by standardized instruments or professionally recognized scales. (History: Sec. 20-7-402, MCA; IMP, 20-7-401, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1117—Criteria for Identification of Student as Having Deaf-Blindness

(1) The student has both deafness or hearing impairment and vision impairment and severe communication problems that severely restricts the student's ability to communicate and participate in education programs solely for students with deafness or blindness. Written documentation shall include description of:

(a) existence of a hearing impairment, deafness and vision impairment as defined in ARM 10.16.1118, 10.16.1119, and 10.16.1124;

(b) significant deficits in speech-language performance as defined in ARM 10.16.1119; and

(c) the impact of impairments on other developmental and educational problems is so severe that multiple disabilities special education and related services are required. (History: Sec. 20-7-402, MCA; IMP, 20-7-401, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1118—Criteria for Identification of Student as Having Deafness

(1) The student has a hearing impairment so severe that the student is impaired in processing linguistic information, with or without amplification, to the extent that prevents the auditory channel from being the primary mode of learning speech and language.

(2) The student's educational performance is adversely affected as documented by specific examples. The results and analysis of a current assessment of language development as measured by standardized tests or professionally recognized scales appropriate to age level and administered individually is required prior to identification. (History: Sec. 20-7-402, MCA; IMP, 20-7-401, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

Draft—Criteria for Identification of Student as Having Emotional Disturbance

(1) The student has serious emotional disturbance if an emotional condition exists in which one or more of the following characteristics are present:

(a) an inability to build or maintain satisfactory relationships with peers and teachers;

(b) inappropriate types of behavior or feelings under normal circumstances, including behaviors which are psychotic or bizarre in nature or behaviors which are atypical and for which no observable reason exists;

(c) a general, pervasive mood of unhappiness or depression including major depression and dysthymia, but excluding normal grief reactions;

(d) a tendency to develop physical symptoms or fears associated with personal or school problems including separation anxiety, avoidant disorder and overanxious disorder; or

(e) schizophrenia.

(2) For each of the conditions in subsection (1), the condition must meet the criteria of having been present to a marked degree, over a long period of time and adversely affecting the student's educational performance.

(3) The student may not be identified as having serious emotional disturbance if:

(a) delays in educational performance are primarily because of visual impairment, hearing impairment, orthopedic impairment, cognitive delay, cultural factors or limited educational opportunity; or

(b) common disciplinary problem behaviors (e.g., truancy, smoking, breaking school conduct rules) are the sole criteria for determining existence of emotional disturbance. Common disciplinary problem behaviors may exist in conjunction with emotional disturbance, but cannot be used as the sole criteria for recommending special education and related services, especially when the behavior is adaptive to the social condition under which the behavior arises.

(4) The student may be identified as having serious emotional disturbance only when:

(a) the student has been observed by two or more persons at separate times and places, each of which cite and corroborate specific behaviors which, in the aggregate, provide foundation for probable concern for serious behavioral disability;

(b) the local educational agency has attempted at least two intervention techniques. These interventions may include, but are not limited to, changes in student's regular class schedule, curriculum, and/or teacher, school counseling or use of community resources; and

(c) written documentation of the observations and interventions are provided. Written documentation shall include:

(i) dated and signed documented anecdotal records of behavioral observations made in multiple settings (i.e., in addition to the classroom setting consider playground, cafeteria, school bus, hallway, etc.) and showing that the student's disability is evident in other than the school classroom environment;

(ii) a social or developmental history compiled directly from the parent(s) and/or records, when parents are not available; and

(iii) documentation of at least two different intervention techniques that have been tried in the regular classroom and the effect of each.

(AUTH: 20-7-401, 20-7-403, MCA; IMP: 20-7-403, MCA.)

10.16.1119—Criteria for Identification of Student as Having a Hearing Impairment

(1) The student may be identified as having a hearing impairment if the student has an organic hearing loss in excess of 20 dB better ear average in the speech range (500, 1,000, 2,000 Hz), unaided, or has a history of fluctuating hearing loss which has interrupted the normal acquisition of speech and language and continues to adversely affect educational performance. Adversely affect the student's educational performance means that the student's ability to learn in

the regular education setting remains severely affected even when classroom interventions are applied or accommodations provided, to the degree that the student needs special education and related services.

(2) Each local educational agency shall ensure that auditory trainers or hearing aids worn in school by students with hearing impairments are functioning properly. (History: Sec. 20-7-402, MCA; IMP, 20-7-401, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

Draft—Criteria for Identification of Student as Having Other Health Impairment

(1) The student may be identified as having other health impairments if the student has chronic or acute health problems, or disorders of the cardiorespiratory or central nervous systems, or other profound health circumstances, or degenerative health or medical condition which substantially limits the student's strength, vitality or alertness or ability to learn or participate in education programs.

(2) Substantially limits means that the student's ability to learn in the regular education setting remains severely affected even when classroom interventions are applied or accommodations provided. Written documentation shall include specific examples of the adverse affect of the medical condition on the student's educational performance, including school attendance, effect of medications, treatments or other medical interventions, and written documentation of the interventions or accommodations.

(AUTH: 20-7-401, 20-7-403, MCA; IMP: 20-7-403, MCA.)

10.16.1120—Criteria for Identification of Student as Having Orthopedic Impairment

(1) The student has an orthopedic impairment as diagnosed or confirmed by a qualified medical practitioner which substantially limits normal function of muscles and joints due to congenital anomaly, disease or permanent injury and adversely affects the student's ability to learn or participate in education programs. "Substantially limits" requires specific examples of the adverse impact of the orthopedic impairment on the student's educational performance and written documentation of:

(a) the effect of the orthopedic impairment on the student's ability to participate in educational programs, including vocational and physical education programs;

(b) the effect of medications, treatments or other medical interventions on the student's educational performance;

(c) the results of a physical therapy and/or occupational therapy evaluation which describes the need for therapy as related to educational performance; and

(d) accommodations or interventions tried in regular education including, if appropriate, modifications to program requirements, schedules or facilities. (History: Sec. 20-7-402, MCA; IMP, 20-7-401, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1121—Criteria for Identification of Student as Having Multiple Disabilities

(1) The student shall be considered as a full-time special education student, i.e., that they spend more than 50 percent of their time in school receiving special education or related services.

(2) The student shall have a minimum of two concomitant disabilities, one of which must be cognitive delay, hearing impairment, deafness, visual impairment, orthopedic impairment or other health impairment.

(a) If the student has only two, one cannot be a speech-language impairment or specific learning disability.

(b) The student cannot be identified as having deaf/blindness.

(3) Each disability shall be individually identified in accordance with ARM 10.16.1115 through 10.16.1124. (History: Sec. 20-7-402, MCA; IMP, 20-7-401, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1122—Criteria for Identification of Student as Having Specific Learning Disability

(1) The student may be identified as having a specific learning disability if, when provided learning experiences appropriate to the student's age and ability levels:

(a) the student's rate of achievement relative to the student's age and ability levels remains below expectations and the student does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in subsection (1)(b);

(b) the student has a severe discrepancy between the student's intellectual ability and academic achievement in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematics calculation, mathematics reasoning; and

(c) the severe discrepancy between ability and achievement is not correctable without special education and related services.

(i) For initial identification, a severe discrepancy is defined as a 50 percent or higher probability of a two standard deviation discrepancy between general cognitive ability and achievement in one or more of the areas identified in subsection (1)(b) when adjusted for regression to the mean. Error in test measurement requires clinical judgment for students who score near two standard deviations below the population mean.

(ii) When standardized test instruments do not provide valid assessment results for determining the two standard deviation discrepancy, any alternative assessment procedure utilized shall determine that a discrepancy between ability and achievement exists at a level of severity similar to a two standard deviation discrepancy. In making this judgment, the child study team shall document the basis for concluding that standardized test instruments, when applied to this

student, are not valid and verify with specific examples that the student's ability to learn in the regular education setting in one or more of the areas listed in subsection (1)(b) remains severely affected even when classroom interventions are applied.

(2) The student may not be identified as having a specific learning disability if the severe discrepancy between ability and achievement is primarily due to visual impairment, hearing impairment, orthopedic impairment, cognitive delay or emotional disturbance, or environmental, cultural or economic factors.

(3) The student may be identified as having a specific learning disability only when written documentation supports that:

(a) the student has had opportunities to learn commensurate with the student's age and abilities;

(b) at least two intervention techniques have been tried in the regular classroom and that the student's ability remains severely affected; and

(c) educationally relevant medical findings, if any, have been considered. (History: Sec. 20-7-402, MCA; IMP, 20-7-401, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1123—Criteria of Identification of Student as Having Speech-Language Impairment

(1) The student may be identified as having a speech-language impairment if the student has a significant deviation in speech such as fluency, articulation or voice, or in ability to decode or encode oral language which involves phonology, morphology, semantics or pragmatics or a combination thereof.

(a) The student has a significant deviation in oral performance if the student's performance on standardized test is two standard deviations below the population mean, or between one and one-half and two standard deviations below the population mean and there is documented evidence over a six-month period prior to the current evaluation of no improvement in the speech-language performance of the student, even with regular classroom interventions.

(b) For articulation, a significant deviation is consistent articulation errors persisting one year beyond the highest age when 90 percent of the students have acquired the sounds based upon specific developmental norms.

(c) If norm-referenced procedures are not used, alternative assessment procedures must substantiate a significant deviation from the norm.

(2) The student may be identified as having a speech-language impairment only when written documentation of the student's interpersonal communication effectiveness in a variety of educational settings by the teacher and parent and speech-language pathologist, and others as appropriate supports the adverse educational affect of the speech-language impairment.

(3) The student may not be identified as having a speech-language impairment if the speech or language problems primarily result from environmental or cultural factors. (History: Sec. 20-7-402, MCA; IMP, 20-7-401, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

Draft—Criteria for Identification of Students as Having Traumatic Brain Injury

(1) The student may be identified as having traumatic brain injury if the student has damage to the brain that produces impairment of cognitive abilities, speech, behavioral or emotional control, or physical functioning substantially limits the student's functional or psychosocial ability or both and the student's ability to learn or participate in education programs.

(2) Substantially limits means that the student's ability to learn and participate in the regular education setting remains severely affected even when classroom interventions are applied or accommodations provided. Written documentation shall include specific examples of the severe effect of the injury on the student's educational performance, including school attendance, loss or retention of previously acquired skills and knowledge, and student's social/interpersonal skills.

(3) The student may not be identified as having a traumatic brain injury if the disability is primarily due to visual or hearing impairment, cognitive delay, emotional disturbance, or environmental, cultural or economic factors or the injury to the brain is congenital, degenerative, or caused by birth trauma.

10.16.1124—Criteria for Identification of Student as Having Visual Impairment

(1) The student may be identified as having a visual impairment if the student has a:

(a) visual acuity of 20/70 or less in the better eye with correction or field of vision which at its widest diameter subtends an angle of no greater than twenty (20) degrees in the better eye with correction; and

(b) needs special education and related services.

(History: Sec. 20-7-402, MCA; IMP, 20-7-401, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

(Rule 10.16.1103 has been written into Rule 10.16.1113 and will be repealed.)

10.16.1103—Review/Re-evaluation

(1) Each educational agency shall set forth procedures to assure:

(a) that each child's individualized education program is reviewed and revised periodically, but not less than annually; and

(b) that a comprehensive educational reevaluation of the child, which is based on ARM 10.16.1101 and 10.16.1102 of this chapter, is conducted whenever conditions warrant, but no less than once every three years. A comprehensive educational evaluation will be made at the request of the child's parents or teachers. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 282, Eff. 8/26/77, ARM Pub. 11/26/77.)

Individualized Education Program

10.16.2712—Individualized Education Program Implementation

(1) At the beginning of each school year, each local educational agency shall have in effect an individualized education program for each child with disabilities who is receiving special education and related services from that agency. An individualized education program shall:

(a) be in effect before special education and related services are provided to a student; and

(b) be implemented as soon as possible following the meeting under ARM 10.16.2713.

(2) Each local educational agency shall initiate and conduct meetings for the purpose of developing, periodically reviewing and, if appropriate, revising each student's individualized education program.

(a) A meeting to develop an individualized education program for a student must be held within 30 days of the initial determination that the student with disabilities needs special education and related services.

(b) The individualized education program of each student shall be reviewed in accordance with 34 CFR 300.340-300.550.

(i) A meeting for this purpose shall be held at least once a year.

(ii) The periodic review of the IEP shall include documentation of the student's performance in meeting the annual goals and short-term objectives identified on the student's IEP.

(3) Within a short time of enrollment of a student with disabilities, a local educational agency shall initiate procedures to develop, review and, if appropriate, revise the individualized education program.

(a) If a student with disabilities enrolls with a copy of the student's current individualized education program, the local educational agency in which the student enrolls may adopt the student's current IEP if an IEP meeting is held in conformance with ARM 10.16.2713 and the parent and local educational agency agree on the placement.

(b) If a student with disabilities enrolls without a copy of the student's current IEP, the local educational agency in which the student enrolls shall initiate procedures to determine the student's eligibility for services under IDEA and, if appropriate, develop an IEP. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.2713—Composition of Individualized Education Program Team

(1) The individualized education program meeting shall include the following participants:

(a) principal or administrative designee or representative of the local educational agency, other than the student's special education teacher, who is qualified to provide, or supervise the provision of, special education.

(i) if the local educational agency does not employ a principal, the county superintendent or special education cooperative director; and

(b) the student's regular education teachers and special education teachers who have responsibility for implementing the student's individualized education program.

(i) If the student has more than one teacher, the local educational agency shall designate which teacher will participate in the meeting. A school counselor may represent the regular education teacher.

(ii) If the student is identified as having a speech/ language impairment, the special education teacher could be the speech/language pathologist.

(iii) If the student is age 3 or 4, a regular education teacher is not required.

(c) one or both of the student's parents; and

(d) whenever appropriate, the student.

(2) For a student with disabilities who has been evaluated for the first time, the local educational agency shall ensure that a member of the evaluation team or a representative of the local educational agency who is knowledgeable about the evaluation procedures used with the student and is familiar with the results of the evaluation attend the meeting.

(3) For a student with disabilities who is enrolled in a private school and receives special education and related services from the local educational agency, the local educational agency shall ensure that a representative of the private school attends each meeting.

(a) If the representative cannot attend, the agency shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

(b) If the representative does not attend the meeting, the local educational agency shall keep documentation of its attempts to ensure participation by the private school.

(4) If the purpose of the meeting is the consideration of transition services for a student with disabilities, the local educational agency shall ensure that the student with disabilities and a representative of any other agency that is likely to be responsible for providing or paying for transition services participates in the meeting.

(a) If the student with disabilities does not attend, the local educational agency shall take other steps to ensure that the student's preferences and interests are considered.

(b) If a representative of an agency invited to participate does not attend the meeting, the local educational agency shall take other steps such as individual or conference telephone calls, written correspondence or agency visits to obtain the participation of the other agency in the planning of any transition services.

(5) In interpreting evaluation data and in making placement decisions, the local educational agency shall ensure that the placement decision is made by persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1207—Content of Individualized Education Program

(1) The data gathered from the comprehensive educational evaluation conducted by the child study team shall be utilized in the development of the individualized education program.

(2) The term "individualized education program" means a written statement for each student with a disability that is developed and implemented in accordance with ARM 10.16.2712 and 10.16.2713.

(3) The individualized education program shall include:

(a) a statement of the student's present levels of educational performance;

(b) a statement of annual goals, including short-term instructional objectives;

(c) a statement of the specific special education and related services to be provided to the student, and the extent to which the student will be able to participate in regular educational programs;

(i) a description of participation with children without disabilities, including the opportunity to participate in the variety of educational programs and services available to children without disabilities; and

(ii) a description of participation in physical education program;

(d) the projected dates for initiation of services and the anticipated duration of the services; and

(e) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

(4) For any student who is sixteen (16) years old and at a younger age if appropriate, and for any student who is fourteen (14) years old and is receiving special education and related services more than 50 percent of the school day, the individualized education program shall include a statement of transition services to be provided, if any, including consideration of instruction, community experiences, development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

(a) For students who need transition services, the IEP must include a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting.

(b) For students who do not need transition services, the IEP must include a statement to that effect and the basis upon which the determination was made.

(5) Each individualized education program team member shall sign the report. The individualized education program shall be placed in the student's special education record. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1983 MAR p. 1668, Eff. 11/11/83; AMD, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.2714—Related Services

(1) A student shall receive related services only when the related services are required to assist the student with a disability to benefit from the student's special education.

(2) Each related service must be identified on the student's IEP, the projected dates for initiation of services and the anticipated duration of the services identified, and, when appropriate, goals and short-term objectives developed.

(3) Related services shall be provided at no cost to the parent. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1105—Aversive Treatment Procedures

(1) Individual programs involving the use of aversive stimuli (e.g., restraints, shock, seclusion) shall be conducted only with the written consent of the affected student's parents and at the recommendation of the child study team and shall be described by specific behavioral objectives. Chemical restraint may never be used for punishment, for staff convenience, or as a substitute for a program. Each use of physical restraint, aversive techniques, or environmental seclusion shall be recorded in the student's file.

(2) The record shall include:

(a) description of behavior to be modified;

(b) evidence that less aversive measures have been tried;

(c) expected behavioral outcome;

(d) actual behavioral outcome;

(e) if relevant, list possible secondary effects;

(f) date for review or termination; and

(g) written parental permission.

(History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77.)

10.16.2715—IEP Accountability

(1) No local educational agency, teacher or other person may be held accountable if a student with disabilities does not achieve the growth projected in the annual goals and short-term instructional objectives identified in the student's IEP. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

Least Restrictive Environment

10.16.1301—Least Restrictive Environment

(1) Each local educational agency shall ensure:

(a) that to the maximum extent appropriate, students with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled; and

(b) that special classes, separate schooling or other removal of students with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) Each local educational agency shall ensure that:

(a) each student's educational placement is determined at least annually, is based on his or her individualized education program, and is as close as possible to the student's home;

(b) various alternative placements are available to the extent necessary to implement the individualized education program for each student with disabilities;

(c) unless a student's individualized education program requires some other arrangement, the student is educated in the school which he or she would attend if not disabled;

(d) in selecting the least restrictive environment, consideration is given to any potential harmful effect on the student or on the quality of services which he or she needs; and

(e) in providing or arranging for the provision of nonacademic and extra-curricular services and activities, including meals, recess periods, and the services and activities set forth in ARM 10.16.1310, each student with disabilities participates with children without disabilities in those services and activities to the maximum extent appropriate to the needs of that student. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-411, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1983 MAR p. 1668, Eff. 11/11/83; AMD, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1305—Continuum of Services

(1) Each local educational agency shall ensure that a continuum of alternative placements is available to meet the needs of students with disabilities for special education and related services. The continuum of alternative placements shall:

(a) include instruction in regular classes, special classes, special schools, home instruction and instruction conducted in hospitals, institutions and other settings; and

(b) make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with regular class placement.

(2) Each local educational agency shall provide each student with disabilities the opportunity to participate in the physical education program available to children without disabilities unless the student needs adapted physical education as prescribed in the student's individualized education program.

(a) Adapted physical education is defined as specially designed physical education as prescribed in the IEP which allows the student opportunity for active participation in the development of physical and motor fitness, fundamental motor skills and patterns, and skills in aquatics, dance and individual and group games and sports, including intramural and lifetime sports appropriate to his or her individual needs.

(b) A student may be eligible for adapted physical education if a significant deficit in the student's fine or gross motor performance exists and the student's ability to perform the physical education competencies required by the local educational agency's health enhancement curriculum is adversely affected.

(c) A student's special education program may singularly be adapted physical education.

(3) Each local educational agency shall provide each student with disabilities the opportunity to participate in the regular vocational education program available to children without disabilities unless the student needs specially designed vocational education as prescribed in the student's individualized education program.

(a) Vocational education means organized educational programs offering a sequence of courses that are directly related to the preparation of individuals in paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advance degree. Such programs shall include competency-based applied learning, occupation-specific skills necessary for economic independence as a productive and contributing member of society and applied technology education.

(4) Each local educational agency shall take steps necessary to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford students with disabilities an equal opportunity for participation in those services, including counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the local educational agency, and referrals to agencies which provide assistance to persons with disabilities. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1979 MAR p. 359, Eff. 3/31/79; AMD, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.2716—Determining Least Restrictive Environment

(1) In determining the educational placement of a student with disabilities, the individualized education program team must:

(a) review and draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior and a review of previous annual reviews of individualized education programs;

(b) ensure that information obtained from all of these sources is documented and carefully considered; and

(c) ensure that the placement decision is made by a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options.

(2) The individualized education program team must ensure that all decisions regarding the student's placement are made in conformance with ARM 10.16.2716 and 10.16.1310, and that placement is not based upon the category of disability.

(3) The educational placement of a student with disabilities shall be with students without disabilities in chronologically age-appropriate classroom settings and schools unless otherwise determined by the individualized education program team.

(4) If the educational placement of a student with disabilities is outside of the regular educational environment, the student shall be placed in the educational setting that affords the student most interaction with children without disabilities and which meets the requirements of the individualized education program. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1308—Special Education in Home, Hospital or Individualized Settings

(1) For the purpose of providing special education and related services, a local educational agency may place a student with disabilities in her or his home or hospital only when an individualized education program has been developed in accordance with ARM 10.16.2712, and when a medical doctor verifies that the student's medical condition prohibits the student from attending school. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1983 MAR p. 1668, Eff. 11/11/83; AMD, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1310—Placement by the Local Educational Agency

(1) If the local educational agency has attempted to develop a placement alternative tailored to the needs of the individual with disabilities and the local educational agency cannot provide a free appropriate public education, the local educational agency may place the student in another local educational agency for the purpose of providing special education and related services in accordance with ARM 10.16.2713 and 10.16.2714.

(2) A student with disabilities may be placed in a residential school or facility for the purposes of providing special education and related services only when the nature and severity of the disability requires a totally controlled environment.

(a) A totally controlled environment refers to one or more of the following conditions:

(i) a 24-hour program of care and instruction is required;

(ii) extreme degrees of consistency of approach between living and school environments are required;

(iii) a total immersion of the student in a treatment program is required in order for educational progress to occur; or

(iv) placement in day treatment programs, even with supportive aids and services, does not meet individual student needs.

(b) A local educational agency must first make a reasonable attempt to secure and utilize in-state residential schools or facilities, if appropriate, before making an out-of-state placement in a residential school or facility.

(3) The local educational agency shall be responsible for ensuring that residential school or facility meets state education standards and makes available special education and related services in accordance with IDEA. The local educational agency shall ensure that related services including room and board, are provided by qualified personnel and in an appropriately licensed facility.

(4) Before a local educational agency places a student with disabilities in, or refers a student to another local educational agency or a private school or facility for the purpose of providing special education and related services, the local educational agency shall initiate and conduct a meeting to develop an individualized education program for the student.

(a) For the purpose of placement, the local educational agency shall ensure that a representative of the local educational agency, which will provide the special education services, or the private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the local educational agency which will provide the special educational services or the private school or facility.

(b) After the initial placement, the local educational agency or the private school or facility, which provides the special education services, shall initiate any meetings to review and revise the student's individualized education program.

(i) The local educational agency, which provides the special education services, or the private school or facility shall notify the local educational agency which placed the student and the parent of the student of the IEP meeting and attempt to arrange the meeting at a mutually agreeable time and place.

(ii) The local educational agency, which initially placed the student, shall ensure that the parents and a representative of the local educational agency, which placed the student, are involved in any decision about the student's individualized educational program and agree to any proposed changes in the program before those changes are implemented.

(c) The local educational agency, which initially placed the student, the local educational agency, which provides the special education services, the private school or facility or the parents of the student may request an IEP meeting at any time.

(History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82; AMD, 1983 MAR p. 1668, Eff. 11/11/83; AMD, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.2717—Comparability

(1) Services, equipment, supplies, facilities and space allocation for special education and related services must be comparable to services, equipment and facilities for students without disabilities. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.2718—Length of School Day, School Year

(1) A student with disabilities shall receive the same opportunity to attend school under provisions of Section 20-1-302, MCA, as students without disabilities unless the individualized education program requires other arrangements.

(2) The individualized education program team shall determine at least annually whether a student with disabilities receives an extended school year program. The determination of eligibility for extended school year program shall include a statement that:

(a) identifies goals and objectives on the individualized education program which must be addressed in a continuous program to prevent significant skill regression; and

(b) indicates the student's inability to maintain learned skills over a break in educational programming and the student's inability to recover her or his loss limits the student's educational progress.

(3) For students who are eligible for special education or special education and related services under IDEA and whose third birthday occurs during the summer prior to the school year in which he or she is eligible for services from the local educational agency, the individualized education program team shall consider whether the student receives an extended school year program. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-414, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

Special Education Personnel

10.16.2719—Comprehensive System of Personnel Development

(1) The office of public instruction shall establish procedures for the development and conduct of a comprehensive system of personnel development which includes inservice, preservice, and technical assistance training for regular education teachers, special education teachers, school administrators and related service providers. The procedures shall include:

(a) An annual statewide needs assessment to be conducted before June 1 of each year to determine if:

(i) a sufficient number of qualified personnel are available in the state;

(ii) inservice and technical assistance personnel development programs are needed in specific areas related to the provision of special education and related services; and

(iii) preservice preparation of new personnel is needed.

(b) An annual program plan which provides a detailed structure for personnel planning and focuses on preservice and inservice education needs and which describes procedures for:

(i) acquiring, reviewing and disseminating to regular and special education teachers, teacher aides and instructional assistants, administrators and related service providers significant information about promising educational practices proven effective through research or demonstration;

(ii) providing technical assistance to local education agencies, educational cooperatives, state-operated programs and private programs serving state agency placed students with disabilities; and

(iii) identifying state, local and regional resources which will assist in meeting the state's personnel preparation needs.

(2) The superintendent of public instruction shall appoint a comprehensive system of personnel development council to ensure that public and private institutions of higher education and other agencies and organizations, having an interest in the preparation of personnel for the education of students with disabilities, have an opportunity to participate fully in the development, review and annual updating of the state comprehensive system of personnel development. The council shall:

(a) develop a long-range personnel development plan and evaluate effectiveness of state personnel training activities in meeting the plan and make recommendations for inservice, preservice and technical assistance programs on an annual basis;

(b) establish procedures to ensure collaboration and coordination of office of public instruction and local educational agency efforts in the utilization of current technology and training techniques in meeting the personnel development needs and use of appropriate networks, linkages and databases; and

(c) prepare a written report on recommendations regarding personnel preparation to the superintendent of public instruction and the state special education advisory panel. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.1713—Special Education Professional Staff Qualifications

(1) Any teacher providing special education and related services to students with disabilities shall hold a current Montana teaching certificate with appropriate endorsements.

(a) A special education teacher must hold a current Montana teaching certificate with an endorsement in special education.

(b) A teacher of homebound or hospitalized students must hold a current Montana teaching certificate.

(c) A school psychologist must hold a current Montana Class 6 teaching certificate.

(d) Supervisors of special education teaching personnel must have a Class III administrator's certificate with a principal's endorsement or a supervisor's endorsement in special education.

(2) All special education and related services for students with disabilities shall be provided under the direction of qualified personnel.

(3) Each local educational agency must require that each administrator which provides or supervises the provision of special education and related services to students with disabilities, obtains specific skills which enable the administrator to deal effectively with students with disabilities. These skills may be obtained through formal training or inservice training.

(4) Each local educational agency must require that each teacher who implements education services to students with disabilities, obtains specific skills which enable the teacher to deal effectively with students with disabilities under the teacher's supervision. These skills may be obtained through formal training or inservice training or consultation.

(5) A professional person (i.e., occupational therapist, physical therapist, social worker, psychiatrist, nurse, audiologist, speech-language pathologist, recreational therapist, professional counselor or physician) providing special education and related services to students with disabilities under this section shall hold a license from the appropriate state authority and meet the appropriate professional requirements that are based on the highest entry-level requirements in the State applicable to the profession or discipline.

(6) A teacher aide or instructional assistant shall meet current office of public instruction accreditation standards under ARM 10.55.707. (History: Sec. 20-7-402, MCA; IMP, Sec. 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

Accreditation Standard

10.55.707—Certification

(1) All teachers shall hold valid Montana teaching certificates. Administrators who teach also shall hold teaching certificates.

(2) An emergency authorization of employment is not a valid certificate; it is granted to a district which, under emergency conditions, cannot secure the services of a certified teacher.

(3) All school psychologists must be certified with a Class 6 specialist certificate.

(4) Study hall supervisors need not be certified.

(5) Instructional aides need not be certified; however, the following supervision is required:

(a) Instructional aides assigned due to classroom size or diversity, must be under direct supervision of a certified teacher. This means that the aide must be responsible to a certified teacher who has the legal authority for instruction and assessment of students. The supervising teacher must be available while the aide is fulfilling his/her responsibilities and must not be simultaneously assigned to another teaching duty or preparation time.

(b) Instructional aides assigned to assist students with special education needs must be under the supervision of the teacher or other professional designated as primarily responsible for instructional planning for the student. The designated professional has the responsibility to provide regularly scheduled communication and direction to the instructional aide and not to delegate any activity to the instructional aide which requires professional skill, knowledge and judgment.

(c) Instructional aides hired to assist students in gaining specialized knowledge not generally available from a properly endorsed teacher shall be supervised by a teacher certified at the proper level. This certified teacher is responsible for instruction and assessment of students and must not be simultaneously assigned to another teaching duty or preparation time.

(6) In accordance with state law, salary shall be withheld from certified staff who have not registered their certificates in the office of the county superintendent after their term of service begins. County superintendents shall receive from the schools a list of district professional staff and their assignments and shall advise school districts of professional staff who do not have current registered certificates.

(7) All certified staff shall file official transcripts of all college work in the office of their chief school administrator. If there is no district superintendent or principal, the county superintendent is the chief school administrator.

(8) All personnel whose qualifications are not outlined in the certification standards must have a license issued by the appropriate state or federal licensing agent or national registry if required by the existing rules and regulations.

(9) All certified staff holding a provisional (Class 5) certificate will file in the office of the chief administrator the plan of intent from the college where they are completing their programs. (History: Sec. 20-2-114 MCA; IMP, Sec. 20-2-121 MCA; NEW, 1989 MAR p. 342, Eff. 7/1/89; AMD, 1991 MAR p. 1933, Eff. 10/18/91.)

10.55.708—Teaching Assignments

(1) Teachers shall be assigned at the levels and in the subjects for which their certificates are endorsed. Exceptions are:

(a) individuals serving in internship positions approved by the board of public education;

(b) teachers assigned in grade 5 or 6 in the departmentalized classroom or middle school,

who hold a 5-12 secondary certificate, must be endorsed in the subjects they are teaching. A 5-12 certificate will not cover a grade 5 or 6 assignment in a self-contained classroom;

(c) for a clarification of teaching assignments in departmentalized and secondary settings, see "Montana School Accrediation and Procedures Manual" published March 1987 or the latest edition by the office of public instruction, which is incorporated in this rule by reference.

(2) Certification at the elementary level based on a bachelor's degree entitles the holder to teach in grades K through 8.

(3) No teacher shall have more than 28 clock hours of assigned student responsibility per week except for one- and two-teacher schools. (History: Sec. 20-2-114 MCA; IMP, Sec. 20-2-121 MCA; NEW, 1989 MAR p. 342, Eff. 7/1/89.)

10.55.714—Professional Development

(1) As part of a continuous program for instructional and administrative improvement, each school district shall provide a minimum of three days of professional development annually for each certified employee. A day of professional development is defined as six hours of actual contact time. Professional development time may be divided into no less than two-hour increments to facilitate delivery of professional development programs.

(2) By April 15 of each year, the school district shall formulate a professional development plan which includes:

(a) goals and objectives appropriate to the professional development needs of teachers, administrators, school trustees, and all other school personnel;

(b) acceptable activities; and

(c) evaluation methods required for each activity in the plan.

(3) The board of trustees shall establish an advisory committee to develop and evaluate the plan. The committee shall include but not be limited to teachers, administrative personnel, and trustees. A majority of the committee shall be teachers.

(4) The plan shall be on file in the school's administrative office or with the count superintendent. It shall be available to employees and the public. (History: Sec. 20-2-114 MCA; IMP, Sec. 20-2-121 MCA; NEW, 1989 MAR p. 342, Eff. 7/1/89.)

(Rule 10.16.1801 was not amended. The following rule is a proposed rule change.)

10.16.1801—Auxiliary Personnel

(1) When specific curriculum area teachers (i.e., music, physical education, vocational education) are assigned full-time special education as a supplement to the special education program, the teacher must hold a current Montana teaching certificate with an endorsement in the specific curricular area of instruction. In addition, the local school district must require that each teacher obtain specific skills which enable the teacher to deal effectively with children with disabilities. These skills may be obtained through formal training or inservice training. Special

education supervision must be provided to any auxiliary personnel. (History: Sec. 20-7-403, MCA; IMP, Secs. 20-7-403(2), 20-7-403(7), MCA; NEW, 1977 MAR p. 323, Eff. 8/26/77, ARM Pub. 11/26/77.)

Private Schools

10.16.2720—Local Educational Agency Responsibility for Special Education and Related Services for Private School Students

(1) A local educational agency shall provide students with disabilities enrolled in private schools with a genuine opportunity for equitable participation in special education and related services in accordance with 34 CFR 76.650 through 34 CFR 76.670. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

34 CFR 76.650—Private schools; purpose of Regs 76.651-76.662

(a) Under some programs, the authorizing statute requires that a State and its subgrantees provide for participation by students enrolled in private schools. Sections 76.651-76.662 apply to those programs and provide rules for that participation. These sections do not affect the authority of the State or a subgrantee to enter into a contract with a private party.

(b) If any other rules for participation of students enrolled in private schools apply under a particular program, they are in the authorizing statute or implementing regulations for that program.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Note: Some program statutes authorize the Secretary—under certain circumstances—to provide benefits directly to private school students. These "bypass" provisions—where they apply—are implemented in the individual program regulations.

34 CFR 76.651—Responsibility of a State and a subgrantee

(a) (1) A subgrantee shall provide students enrolled in private schools with a genuine opportunity for equitable participation in accordance with the requirements in Sec. 76.652-76.662 and in the authorizing statute and implementing regulations for a program.

(2) The subgrantee shall provide that opportunity to participate in a manner that is consistent with the number of eligible private school students and their needs.

(3) The subgrantee shall maintain continuing administrative direction and control over funds and property that benefit students enrolled in private schools.

(b) (1) A State shall ensure that each subgrantee complies with the requirements in Sec. 76.651-76.662.

(2) If a State carries out a project directly, it shall comply with these requirements as if it were a subgrantee.

(Authority: 20 U.S.C. 1221e-3(a)(1))

34 CFR 76.652—Consultation with representatives of private school students

(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of:

(1) Which children will receive benefits under the project;

(2) How the children's needs will be identified;

(3) What benefits will be provided;

(4) How the benefits will be provided; and

(5) How the project will be evaluated.

(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.

(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(Authority: 20 U.S.C 1221e-3(a)(1))

34 CFR 76.653—Needs, number of students, and types of services

A subgrantee shall determine the following matters on a basis comparable to that used by the subgrantee in providing for participation of public school students:

(a) The needs of students enrolled in private schools.

(b) The number of those students who will participate in a project.

(c) The benefits that the subgrantee will provide under the program to those students.

(Authority: 20 U.S.C. 1221e-3(a)(1))

34 CFR 76.654—Benefits for private school students

(a) *Comparable benefits*

The program benefits that a subgrantee provides for students enrolled in private schools must be comparable in quality, scope, and opportunity for participation to the program benefits that the subgrantee provides for students enrolled in public schools.

(b) *Same benefits*

If a subgrantee uses funds under a program for public school students in a particular attendance area, or grade or age level, the subgrantee shall ensure equitable opportunities for participation by students enrolled in private schools who:

(1) Have the same needs as the public school students to be served; and

(2) Are in that group, attendance area, or age or grade level.

(c) *Different benefits*

If the needs of students enrolled in private schools are different from the needs of students enrolled in public schools, a subgrantee shall provide program benefits for the private school students that are different from the benefits the subgrantee provides for the public school students.

(Authority: 20 U.S.C. 1221e-3(a))(1))

34 CFR 76.655—Level of expenditures for students enrolled in private schools

(a) Subject to paragraph (b) of this section, a subgrantee shall spend the same average amount of program funds on:

(1) A student enrolled in a private school who receives benefits under the program; and

(2) A student enrolled in a public school who receives benefits under the program.

(b) The subgrantee shall spend a different average amount on program benefits for students enrolled in private schools if the average cost of meeting the needs of those students is different from the average cost of meeting the needs of students enrolled in public schools.

(Authority: 20 U.S.C. 1221e-3(a)(1))

34 CFR 76.656—Information in an application for a subgrant

An applicant for a subgrant shall include the following information in its application:

(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.

(b) The number of students enrolled in private schools who have been identified as eligible to benefits under the program.

(c) The number of students enrolled in private schools who will receive benefits under the program.

(d) The basis the applicant used to select the students.

(e) The manner and extent to which the applicant complied with Sec. 76.652 (consultation).

(f) The places and times that the students will receive benefits under the program.

(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(Authority: 20 U.S.C. 1221e-3(a)(1))

34 CFR 76.657—Separate classes prohibited

A subgrantee may not use program funds for classes that are organized separately on the basis of school enrollment or religion of the students if:

(a) The classes are at the same site; and

(b) The classes include students enrolled in public schools and students enrolled in private schools.

(Authority: 20 U.S.C. 1221e-3(a)(1))

34 CFR 76.658—Funds not to benefit a private school

(a) A subgrantee may not use program funds to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The subgrantee shall use program funds to meet the specific needs of students enrolled in private schools, rather than:

(1) The needs of a private school; or

(2) The general needs of the students enrolled in a private school.

(Authority: 20 U.S.C. 1221e-3(a)(1))

34 CFR 76.659—Use of public school personnel

A subgrantee may use funds to make public personnel available in other than public facilities:

(a) To the extent necessary to provide equitable program benefits designed for students enrolled in a private school; and

(b) If those benefits are not normally provided by the private school.

(Authority: 20 U.S.C. 1221e-3(a)(1))

34 CFR 76.660—Use of private school personnel

A subgrantee may use program funds to pay for the services of an employee of a private school if:

(a) The employee performs the services outside of his or her regular hours of duty; and

(b) The employee performs the services under public supervision and control.

(Authority: 20 U.S.C. 1221e-3(a)(1))

34 CFR 76.661—Equipment and supplies

(a) Under some program statutes, a public agency must keep title to and exercise continuing administrative control of all equipment and supplies that the subgrantee acquires with program funds. This public agency is usually the subgrantee.

(b) The subgrantee may place equipment and supplies in a private school for the period of time needed for the project.

(c) The subgrantee shall ensure that the equipment or supplies placed in a private school:

(1) Are used only for the purposes of the project; and

(2) Can be removed from the private school without remodeling the private school facilities.

(d) The subgrantee shall remove equipment or supplies from a private school if:

(1) The equipment or supplies are no longer needed for the purposes of the project; or

(2) Removal is necessary to avoid use of the equipment or supplies for other than project purposes.

(Authority: 20 U.S.C. 1221e-3(a)(1))

34 CFR 76.662—Construction

A subgrantee shall ensure that program funds are not used for the construction of private school facilities.

(Authority: 20 U.S.C. 1221e-3(a)(1))

10.16.2721—Enrollment in Nonpublic Schools by Parents

(1) If a student with a disability has FAPE available and the parents choose to place the student in a private school or facility, the public agency is not required by 34 CFR part 300, Subpart D, to pay for the student's education at the private school or facility. However, the public agency shall make services available to the student as provided under 34 CFR 300.450 through 300.452. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.2722—Special Education and Related Services When Student is Resident of Another Local Educational Agency

(1) If a student with disabilities attends a local educational agency outside of the district of residence of the student because of the actions of another public agency such as departments of family services or social and rehabilitation services or corrections and human services, the local educational agency, which serves the student, shall initiate meetings to develop, review or revise the student's individualized education program.

(a) The local educational agency shall ensure participation in the IEP meeting by a representative of the district of residence.

(b) If the representative cannot attend, the agency shall use other methods to ensure participation by the district of residence.

(2) If a student with disabilities attends a local educational agency outside of the district of residence of the student, when such local educational agency has open enrollment policies, the local educational agency, which provides education to the student, shall ensure that the student receives a free appropriate public education. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff. 8/13/93.)

10.16.2723—Residential Placement by Public Agency Other Than Local Educational Agency

(1) If a student with disabilities has been placed in a residential treatment facility or children's psychiatric hospital according to section 20-7-435, MCA, the residential treatment facility or hospital shall initiate action to develop, review or revise the student's individualized education program and, if necessary, to evaluate and identify a student with a disability in accordance with the requirements of IDEA.

(2) The facility or hospital shall notify a representative of the student's resident local educational agency of the student's placement at the facility or hospital and request the participation of the resident LEA in meetings as required by IDEA. If the representative of the resident LEA cannot attend the meetings, the representative shall use other methods to ensure participation by the resident LEA.

(3) The facility or hospital shall notify the parents of their right to participate in any decision about the student's individualized education program and agree to any proposed changes in the program before those changes are implemented.

(4) The student's resident local educational agency is responsible for ensuring that a student placed in a residential treatment facility or children's psychiatric hospital receives FAPE under IDEA. The office of public instruction is responsible for ensuring compliance with IDEA. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1993 MAR p. 1913, Eff.

34 CFR 300.400—Applicability of §§300.400-300.402

Sections 300.400-300.402 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

(Authority: 20 U.S.C. 1413(a)(4)(B))

34 CFR 300.401—Responsibility of State educational agency

Each SEA shall ensure that a child with a disability, who is placed in or referred to a private school or facility by a public agency;

(a) Is provided special education and related services—

(1) In conformance with an IEP that meets the requirements of §§300.340-300.350;

(2) At no cost to the parents; and

(3) At a school or facility that meets the standards that apply to the SEA and LEAs (including the requirements of this part); and

(b) Has all of the rights of a child with a disability who is served by a public agency.

(Authority: 20 U.S.C. 1413(a)(4)(B))

10.56.101(6)—Student Assessment

(6) Full-time special education students shall not be required to participate in the norm-referenced testing program. Those students receiving only special education instruction in any of those tested academic areas shall not be required to participate in that section of the test for which they receive exclusive special education instruction. (History: Sec. 20-2-121 MCA; IMP, Sec. 20-2-121 MCA; NEW, 1988 MAR p. 1993 MAR p. 683, Eff. 4/30/93.)

PART VI

FINANCE

THE FOLLOWING PAGES CONTAIN RULES CURRENTLY IN MTLR WHICH PERTAIN TO COOPERATIVES AND FINANCES AND HAVE NOT BEEN CHANGED. THE MCA ARE CURRENT AS OF THE 1993 LEGISLATURE.

NEW SPECIAL EDUCATION FINANCE RULES WILL BE IN EFFECT FOR 1994-95 FISCAL YEAR.

Budgets and Program Approval

10.16.2001—Budget and Program

(1) Special approval from the superintendent of public instruction is required before certain programs may be operated. (History: Secs. 20-9-161, 20-9-167, MCA; IMP, Secs. 20-7-403(7), MCA; NEW, 1977 MAR p. 310, Eff. 8/26/77, ARM Pub. 11/26/77.)

10.16.2003—Room and Board Approval

(1) Room and board expenditures must be approved by the superintendent of public instruction. This approval is in addition to budget authority approval. The school district must submit a written request to the superintendent of public instruction to send a special education student(s) to another district (or agency). This request must include the student(s) initials and date of birth, the name of the receiving agency, and an explanation which includes a statement of the problem and the reason services cannot be provided by the district. The foster home or the agency must be licensed to receive room and board funds. (History: Secs. 20-9-161, 20-9-167, MCA; IMP, Secs. 20-7-403(2), 20-7-403(7), MCA; NEW, 1977 MAR p. 310, Eff. 8/16/77, ARM Pub. 11/26/77; AMD, 1982 MAr p. 1934, Eff. 10/29/82.)

10.16.2005—Extended-Year Programs

(l) School districts may provide extended-year special education programs, providing the

district obtains prior written approval from the office of public instruction.

(2) Extended-year programs consist of those instructional sessions which provide a pupil with special education service in excess of the regular school year. Extended-year programs should only be considered for a small percentage of students with disabilities who require concentrated assistance to prevent skill regression.

(3) Extended-year programs should clearly focus on the maintenance of skills and should not, generally, be considered as an ongoing developmental program.

(4) Before an extended-year program can be started, the following information must be provided:

(a) dates for the program;

(b) a brief outline of the program;

(c) an estimate of cost for the program;

(d) an explanation of how children are selected for the program;

(e) a list of staff members for the proposed program. Under each staff member's name, write the initials and birthdates of the children to be served by that staff member. Also, for each child, list the type of disability, severity of the disability (mild, moderate, severe/profound), and number of hours of service to be given each week;

(f) a letter of program approval from the office of public instruction; and

(g) proof that the budget authority has been established in the school year in which the program is to be operated.

(History: Secs. 20-9-161, 20-9-167, MCA; IMP, Secs. 20-7-40392), 20-7-403(7), MCA; NEW, 1977 MAR p. 311, Eff. 8/26/77, ARM Pub. 11/26/77.)

10.16.2105—Expansion or Implementation of Program During a Given School Term

(1) A district may adopt a budget amendment to initiate or expand programs during a school term to serve children with disabilities not previously identified, pursuant to budget amendment procedures established in Sections 20-9-161 through 20-9-166, MCA, and ARM Title 10, Chapter 22, Sub-chapter 2.

(2) State special education payments in excess of prior year special education revenue may be deposited in the miscellaneous fund for one year, pursuant to Section 20-9-321, MCA.

(3) If the trustees determine that the special education expenditures from the revenue deposited in the miscellaneous fund set out in subsection (2) of this section will be continuing expenditures from the general fund for the future, the trustees shall petition the superintendent of public instruction for approval to add the expenditures to the current year's general fund budget for purposes of calculating the ensuing year's general fund budget, pursuant to Section 20-9-147, MCA. (History: Sec. 20-7-403, MCA; IMP, Secs. 20-7-403, 20-9-147, 2-9-321, MCA;

NEW, 1977 MAR p. 315, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1992 MAR p. 213, Eff. 2/14/92.)

10.16.2110—Relationship to the General Fund

(1) The district special education program will be developed as a distinct budget, but is a part of the district total general fund budget. The special education budget is subject to the provisions of operation of the general fund except for the following instances:

(2) Funds approved to support the special education allowable costs may be expended only for special education purposes as approved by the superintendent of public instruction in accordance with the special education budgeting provisions;

(3) The trustees' annual report to the superintendent of public instruction will include provisions for reporting special education expenditures; and

(4) If at year end, school district special education allowable costs expenditures do not equal or exceed the amount of special education allowable cost payment, deposited in the general fund, as indicated by the annual trustees finanicial summary, the amount of the difference will be considered as the end-of-year special education fund balance. That balance cannot be used to reduce local levies or to increase the operating reserves, but must be used to reduce the state equalization aid payment of the district for the ensuing year. If state equalization payments are not received by that district in the ensuing year, the county superintendent will adjust the county equalization payment to the district. (History: Sec. 20-9-102, MCA; IMP, Secs. 20-7-431, 20-9-303, MCA; NEW, 1977 MAR p. 313, Eff. 8/26/77, ARM Pub. 11/26/77; TRANS & AMD, from 10.16.2201, 1992 MAR p. 213, Eff. 2/14/92.)

10.16.2303—Education for All Handicapped Children Act, Part B

(1) Education for All Handicapped Children Act, Part B, monies are to be used for projects which will initiate, expand and improve special education and related services to children with disabilities through local education agencies.

(2) It is the goal of the superintendent of public instruction to ensure that all unserved (out-of-school) children with disabilities age 6 or older, but not having yet reached their 19th birthday, will be guaranteed full education opportunities. Children who are enrolled in private schools may participate in projects sponsored under this Act, but funds cannot be made available directly to such schools. (History: Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA; NEW, 1977 MAR p. 340, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1983 MAR p. 1669, Eff 11/11/83.)

Preschool Programs

Montana Statutes for Special Education

20-7-443. Financial assistance for under six-year-old special education class or program. Any district operating an approved special education class or program for children under the age of 6 years shall be eligible for financial assistance in accordance with 20-7-431 and for transportation reimbursement under 20-7-442. (History: En. 75-7816 by Sec. 434, Ch. 5, L. 1971; AMD. Sec. 2, Ch. 122, L. 1971; AMD. Sec. 15, Ch. 539, L. 1977; R.C.M. 1947, 75-7816.)

10.16.2004—Preschool Programs

(l) Educational programs may be developed for preschool children with disabilities age zero through 5 providing the district obtains prior written approval from the office of public instruction.

(2) Approval procedures for preschool children with disabilities are:

(a) the school district is to submit a letter to the office of public instruction requesting permission to operate a program. The letter should briefly describe the program, identification process and/or number of children with disabilities, and the types of disabilities to be treated; and

(b) a program unit application is to be submitted for each professional staff member. (History: Secs. 20-9-161, 20-9-167, MCA; IMP, Secs. 20-7-403(2), 20-7-403(7), MCA; NEW, 1977 MAR p. 311, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1982 MAR p. 1934, Eff. 10/29/82; AMD, 1983 MAR p. 1669, Eff. 11/11/83.)

Allowable Costs

Montana Statutes for Special Education

20-7-431. (Temporary) Allowable cost schedule for special programs—superintendent to make rules—annual accounting. (1) For the purpose of determining the allowable cost payment amount for special education as defined in 20-9-321, the following schedule of allowable costs must be followed by the school district in preparation of its special education budget for state aid request purposes and by the superintendent of public instruction in his review and approval of the budget (for the purposes of determining the amount of the allowable cost payment for special education for the district, and as used in this schedule, "full-time special pupil" and "regular ANB" are to be determined in accordance with 20-9-311 and 20-9-313):

(a) instruction: salaries, benefits, supplies, textbooks, and other expenses including:

(i) salaries and benefits of special program teachers, regular program teachers, teacher aides, special education supervisors, audiologists, and speech and hearing clinicians—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each person devotes to the special program;

(ii) teaching supplies and textbooks if used exclusively for special programs—the actual total cost;

(iii) other expenses:

(A) contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies—the actual total cost;

(B) transportation costs for special education personnel who travel on an itinerant basis from school to school or district to district or to in-state child study team meetings or in-state individualized education program meetings—the actual cost to the district calculated on the same mileage rate used by the district for other travel reimbursement purposes;

(b) supportive services, including:

(i) salaries and benefits of professional supportive personnel—the entire cost if employed full time in the special program; if the personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each person devotes to the special program. Professional supportive personnel may include counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists.

(ii) salaries and benefits of clerical personnel who assist professional personnel in supportive services—the entire cost if employed full time in the special program; if the personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each person devotes to the special program;

(c) equipment:

(i) equipment—the actual total cost;

(ii) special equipment for district-owned school buses necessary to accommodate special students—the actual total cost;

(iii) special equipment for school buses contracted to transport special students—that portion of the contract price attributable to the cost of special equipment or personnel required to accommodate special students—the actual special cost;

(iv) repair and maintenance of equipment—the actual total cost.

(2) The superintendent of public instruction shall adopt rules in accordance with the policies of the board of public education for:

(a) keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs;

(b) defining the total special program caseload that must be assigned to specific support persons and the kinds of professional specialties to be considered relevant to the program before the district may count an allowable cost under subsection (1)(b) of this section; and

(c) defining the kinds or types of equipment whose costs may be counted under subsection (1)(c)(i) of this section.

(3) An annual accounting of all expenditures of school district general fund money for special education must be made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for the accounting.

(4) If a board of trustees chooses to exceed the budget approved by the superintendent of public instruction, costs in excess of the approved budget may not be reimbursed under the allowable cost payment for special education.

(5) Allowable costs prescribed in this section do not include the costs of the teachers' retirement system, the public employees' retirement system, the federal social security system, or the costs for unemployment compensation insurance.

(6) (a) Notwithstanding other provisions of the law, the superintendent of public instruction may not approve an allowable cost payment amount for special education that exceeds legislative appropriations; however, any unexpended balance from the first year of a biennial appropriation may be spent in the second year of the biennium in addition to the second year appropriation.

(b) If the total allowable cost of the special education budgets exceeds legislative appropriations available for special education, each district shall receive a pro rata share of the available appropriations based upon prioritized budget items as established by the superintendent of public instruction. The amount of the approved budgets in excess of the available appropriations may not be reimbursed under the allowable cost payment for special education and is the responsibility of the school district.

20-7-431. (Effective July 1, 1994) Allowable cost schedule for special programs—superintendent to make rules—annual accounting. (1) For the purpose of determining the allowable cost payment amount for special education as defined in 20-9-321, the following allowable costs and reports must be reviewed by the superintendent of public instruction for the purposes of determining the amount of the allowable cost payment for special education payments and a district's special education expenditures:

(a) instruction: salaries, benefits, supplies, textbooks, and other expenses, including:

(i) the cost of salaries and benefits of special program teachers, regular program teachers, and teacher aides, corresponding to the working time that each person devotes to the special program;

(ii) the total cost of teaching supplies and textbooks for special programs;

(iii) the purchase, rental, repair, and maintenance of instructional equipment required to implement a student's individualized education program;

(iv) activities associated with teacher assistance teams that provide prereferral intervention;

(v) the cost of contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies;

(vi) transportation costs for special education instructional personnel who travel on an itinerant basis from school to school or district to district or to in-state child study team meetings or in-state individualized education program meetings;

(b) related services, including:

(i) the cost of salaries and benefits of professional supportive personnel, corresponding to the working time that each person devotes to the special program. Professional supportive personnel may include special education supervisors, speech-language pathologists, audiologists, counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists;

(ii) the cost of salaries and benefits of clerical personnel who assist professional personnel in supportive services, corresponding to the working time that each person devotes to the special program;

(iii) the cost of supplies for special programs;

(iv) activities associated with teacher assistance teams that provide prereferral interventions;

(v) the cost of contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies;

(vi) transportation costs for special education related services personnel who travel on an itinerant basis from school to school or district to district or to in-state child study team meetings or in-state individualized education program meetings;

(vii) equipment purchase, rental, repair, and maintenance required to implement a student's individualized education program;

(viii) the additional cost of special education cooperatives or joint boards, including operation and maintenance, travel, recruitment, and administration.

(2) The superintendent of public instruction shall adopt rules in accordance with the policies of the board of public education for keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs.

(3) An annual accounting of all expenditures of school district general fund money for special education must be made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for the accounting.

(4) Allowable costs prescribed in this section do not include the costs of the teachers' retirement system, the public employees' retirement system, the federal social security system, or the costs for unemployment compensation insurance.

(5) (a) Notwithstanding other provisions of the law, the superintendent of public instruction may not approve an allowable cost payment amount for special education that exceeds legislative appropriations; however, any unexpended balance from the first year of a biennial appropriation may be spent in the second year of the biennium in addition to the second year appropriation.

(b) If the total special education allowable cost payment, as determined in 20-9-321, exceeds legislative appropriations available for special education, each district shall receive a pro rata share of the available appropriations. (History: En. 75-7813.1 by Sec. 1, Ch. 344, L. 1974; AMD. Sec. 13, Ch. 539, L. 1977; R.C.M. 1947, 75-7813.1; AMD. Sec. 1, Ch. 481, L. 1979; AMD. Sec. 1, Ch. 661, L. 1979; AMD. Sec 1, Ch. 166, L. 1981; AMD. Sec. 1, Ch. 548, L. 1983; AMD. Sec. 1, Ch. 376, L. 1985; AMD. Sec. 1, Ch. 243, L. 1987; AMD. Sec. 19, Ch. 11, Sp. L. June 1989; AMD. Sec. 7, ch. 765, L. 1991; AMD. Sec. 1, Ch. 466, L. 1993; AMD. sec. 55, Ch. 633, L. 1993.)

20-9-321. (Temporary) Allowable cost payment and contingency funds for special education. (1) For the purpose of establishing the allowable cost payment for a current year special education program for a school district, the superintendent of public instruction shall determine the total estimated cost of the special education program for the school district on the basis of a special education program budget submitted by the district. The budget must be prepared on forms provided by the superintendent of public instruction and must set out for each program:

(a) the estimated allowable costs associated with operating the program where allowable costs are as defined in 20-7-431;

(b) the number of pupils expected to be enrolled in the program; and

(c) any other data required by the superintendent of public instruction for budget justification purposes and to administer the provisions of this section.

(2) The total amount of allowable costs approved by the superintendent of public instruction is the special education allowable cost payment for current year special education program purposes.

(3) If a special education program is implemented or expanded during a given school term too late to be included in the determination of the district general fund budget for the school year as prescribed in this part, allowable costs approved under the budgeting provisions of subsections (1) and (2) for the operation of the program during the given year must be funded from any legislative appropriation for contingency financing for special education. Contingency funds granted under this subsection must be deposited in a separate account of the miscellaneous programs fund of the district as provided in 20-9-507.

(4) (a) The special education contingency funds in subsection (3):

(i) are biennially appropriated;

(ii) are for emergencies that may arise in the special education programs of school districts or special education cooperatives; and

(iii) may be used to fund positions that have gone unfilled for a full school fiscal year and for which state special education funds were not awarded.

(b) The board of trustees of a district or the management board of a special education cooperative may apply for contingency funding by submitting to the superintendent of public instruction, in the form prescribed by the superintendent of public instruction, written documentation that describes the need for the funds.(Terminates June 30, 1994--Sec. 62, Ch. 633, L. 1993.)

20-9-321. (Effective July 1, 1994) Allowable cost payment for special education. (1) For the purpose of establishing the allowable cost payment for a current year special education program for a school district, the superintendent of public instruction shall determine the total special education payment to a school district, cooperative, or joint board for special education services formed under 20-3-361 prior to July 1, 1992, using the following factors:

(a) the district ANB student count as established pursuant to 20-9-311 and 20-9-313;

(b) a per-ANB amount for the special education instructional block grant;

(c) a per-ANB amount for the special education related services block grant;

(d) weighted cost factors for cooperatives or joint boards meeting the requirements of 20-7-457, to compensate for the additional costs of operations and maintenance, travel, supportive services, recruitment, and administration;

(e) district and cooperative expenditure reports; and

(f) any other data required by the superintendent of public instruction to administer the provisions of this section.

(2) Special education allowable cost payments must be granted to each school district and cooperative with a special education program as follows:

(a) An instructional block grant must be awarded to each school district, based on the district ANB and the per-ANB special education instructional amount.

(b) A special education related services block grant must be awarded to each school district that is not a cooperative member, based on the district ANB and the per-ANB special education related services amount. The special education related services block grant amount for districts that are members of approved cooperatives or a joint board must be awarded to the cooperatives or joint board. If a cooperative or joint board meets the requirements of 20-7-457, the special education related services block grant must be weighted for the factors in subsection (1)(d).

(3) The superintendent of public instruction shall annually determine the per-ANB special education instructional and special education related services block grant amounts based on the prior years' trustees' expenditure data for special education instruction and related services.

(4) The superintendent of public instruction shall adopt rules necessary to implement this section.

(5) A district shall provide a 25 percent local contribution for special education, matching every $3 of state special education instructional and special education related services block grants with at least one local dollar. A district that is a cooperative member is required to provide

the 25 percent match of the special education related services grant amount to the special education cooperative, but the district is not required to match the weighted funding factors.

(6) The superintendent of public instruction shall determine the actual district match based on the trustees' reports. Any unmatched portion reverts to the state and must be subtracted from the district's ensuing year's special education allowable cost payment.

(7) If a district's allowable costs of special education, as verified by the trustees' reports, exceed by at least 10 percent the total of the special education instructional and special education related services block grant plus the required district match, the district is eligible for a 65 percent reimbursement of the costs that exceed the additional 10 percent. A district that demonstrates severe economic hardship because of exceptional special education costs may apply to the superintendent of public instruction for an advance on the reimbursement for the year in which the actual costs will be incurred. (History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; AMD. Sec. 1, Ch. 404, L. 1971; AMD. Sec. 1, Ch. 400, L. 1973; AMD. Sec 1, Ch. 345, L. 1974; AMD. Sec. 1, Ch. 347, L. 1974; AMD. Sec. 1, Ch. 518, L. 1975; AMD. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(2) thru (22); AMD. Sec. 1, Ch. 315, L. 1983; AMD. Sec. 33, Ch. 11, Sp. L. June 1989; AMD. Sec. 8, Ch. 249, L. 1991; AMD. Sec 27, Ch. 767, L. 1991; AMD. Secs. 22, 23, Ch. 633, L. 1993.)

Definitions

Montana Statutes for Special Education

20-9-311. (Temporary) Calculation of average number belonging (ANB). (1) Average number belonging (ANB) must be computed as follows:

(a) count the regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year; and

(b) multiply the enrollment calculated in subsection (1)(a) by the sum of the pupil-instruction and the approved pupil-instruction-related days for the current school year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to seven approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than 180 school days under 20-9-804, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) Enrollment for a part of a morning session or a part of an afternoon session by a pupil must be counted as enrollment for one-half day.

(5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), enrollment at a regular session of the program for at least two hours of either a morning or an

afternoon session must be counted as one-half pupil for ANB purposes. If a variance has been granted as provided in 20-1-302, ANB must be computed in a manner prescribed by the superintendent of public instruction, but the ANB for a kindergarten student may not exceed one-half for each kindergarten pupil.

(6) When any pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the count calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) The enrollment of prekindergarten pupils, as provided for in 20-7-117, may not be included in the ANB calculations.

(8) If a student spends less than half the time in the regular program and the balance of the time in school in the special education program, the student is considered a full-time special education pupil but is not considered regularly enrolled for ANB purposes. If a student spends half or more of the time in school in the regular program and the balance of the time in the special education program, the student is considered regularly enrolled for ANB purposes.

(9) The ANB of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that when:

(a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes, and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and no incorporated territory is involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes, and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes, and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number

belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(10) When 11th or 12th grade students are regularly enrolled on a part-time basis, high schools may calculate the ANB to include an "equivalent ANB" for those students. The method for calculating an equivalent ANB must be determined in a manner prescribed by the superintendent of public instruction.

(11) For average daily attendance reporting purposes, districts shall provide the superintendent of public instruction with annual reports of school attendance for regularly enrolled students and special education students, using a format determined by the superintendent of public instruction.(Terminates June 30, 1994--sec. 62, Ch. 633, L. 1993.)

20-9-311. (Effective July 1, 1994) Calculation of average number belonging (ANB). (1) Average number belonging (ANB) must be computed as follows:

(a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior school fiscal year, or the nearest school day if those dates do not fall on a school day, and divide the sum by two; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of the pupil-instruction and the approved pupil-instruction-related days for the current school fiscal year and divided by 180.

(2) For the purpose of calculating ANB under subsection (1), up to seven approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than 180 school days under 20-9-804, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) Enrollment for a part of a morning session or a part of an afternoon session by a pupil must be counted as enrollment for one-half day.

(5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), enrollment at a regular session of the program for at least two hours of either a morning or an afternoon session must be counted as one-half pupil for ANB purposes. If a variance has been granted as provided in 20-1-302, ANB must be computed in a manner prescribed by the superintendent of public instruction, but the ANB for a kindergarten student may not exceed one-half for each kindergarten pupil.

(6) When any pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) The enrollment of prekindergarten pupils, as provided in 20-7-117, may not be included in the ANB calculations.

(8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that when:

(a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and no incorporated territory is involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(9) When 11th or 12th grade students are regularly enrolled on a part-time basis, high schools may calculate the ANB to include an "equivalent ANB" for those students. The method for calculating an equivalent ANB must be determined in a manner prescribed by the superintendent of public instruction.

(10) For average daily attendance reporting purposes, districts shall provide the superintendent of public instruction with annual reports of school attendance for regularly enrolled students and special education students, using a format determined by the superintendent. (History: En. 75-6902 by Sec. 252, Ch. 5, L. 1971; AMD. Sec. 1, Ch. 345, L. 1973; AMD. Sec. 1, Ch. 343, L. 1974; AMD. Sec. 3, Ch. 352, L. 1974; AMD. Sec. 1, Ch. 373, L. 1974; AMD. Sec. 1, Ch. 132, L. 1975; R.C.M. 1947, 75-6902(part); AMD. Sec. 8, Ch. 288, L. 1979; AMD. Sec. 1, Ch. 498, L. 1987; AMD. Sec. 6, Ch. 337, L. 1989; AMD. Sec. 27, Ch. 11, Sp. L. June 1989; AMD. Sec. 1, Ch. 250, L. 1991; AMD. Secs. 20, 33, Ch. 633, L. 1993.)

20-9-313. (Temporary) Circumstances under which the regular average number belonging may be increased. The average number belonging of a school, calculated in accordance with the ANB formula prescribed in 20-9-311, may be increased when:

(1) the opening of a new elementary school or the reopening of an elementary school has been approved in accordance with 20-6-502. The average number belonging for the school must be established by the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction.

(2) the opening or reopening of a high school or a branch of the county high school has been approved in accordance with 20-6-503, 20-6-504, or 20-6-505. The average number belonging for the high school must be established by the county superintendent's estimate, after an investigation of the probable number of pupils that will attend the high school.

(3) a district anticipates an increase in the average number belonging due to the closing of any private or public school in the district or a neighboring district. The estimated increase in average number belonging must be established by the trustees and the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June.

(4) a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average number belonging must be based on estimates of increased enrollment approved by the superintendent of public instruction and must be computed in the manner prescribed by 20-9-314.

(5) for the initial year of operation of a program established under 20-7-117(1), the ANB to be used for budget purposes is the same as one-half the number of 5-year-old children residing in the district as of September 10 of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction;

(6) a full-time special pupil, as defined in 20-9-311, in a given school fiscal year may no longer be considered a full-time special pupil in the ensuing school fiscal year (the superintendent of public instruction may grant one ANB for the pupil for the ensuing school fiscal year); or

(7) a high school district provides early graduation for any student who completes graduation requirements in less than eight semesters or the equivalent amount of secondary school enrollment or when a high school district provides early graduation for a class of students who have completed the requirements for graduation after 175 pupil-instruction days in the 12th grade. The increase must be established by the trustees as though the student had attended to the end of the school fiscal year and must be approved, disapproved, or adjusted by the superintendent of public instruction.

20-9-313. (Effective July 1, 1994) Circumstances under which the regular average number belonging may be increased. The average number belonging of a school, calculated in accordance with the ANB formula prescribed in 20-9-311, may be increased when:

(1) the opening of a new elementary school or the reopening of an elementary school has been approved in accordance with 20-6-502. The average number belonging for the school must be established by the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction;

(2) the opening or reopening of a high school or a branch of the county high school has been approved in accordance with 20-6-503, 20-6-504, or 20-6-505. The average number be-

longing for the high school must be established by the county superintendent's estimate, after an investigation of the probable number of pupils that will attend the high school;

(3) a district anticipates an increase in the average number belonging due to the closing of any private or public school in the district or a neighboring district. The estimated increase in average number belonging must be established by the trustees and the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June;

(4) a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average number belonging must be based on estimates of increased enrollment approved by the superintendent of public instruction and must be computed in the manner prescribed by 20-9-314;

(5) for the initial year of operation of a program established under 20-7-117(1), the ANB to be used for budget purposes is the same as one-half the number of 5-year-old children residing in the district as of September 10 of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction; or

(6) a high school district provides early graduation for any student who completes graduation requirements in less than eight semesters or the equivalent amount of secondary school enrollment or when a high school district provides early graduation for a class of students who have completed the requirements for graduation after 175 pupil-instruction days in the 12th grade. The increase must be established by the trustees as though the student had attended to the end of the school fiscal year and must be approved, disapproved, or adjusted by the superintendent of public instruction. (History: En. 75-6903 by Sec. 253, Ch. 5, L. 1971; AMD. Sec. 4, Ch. 345, L. 1973; AMD. Sec. 2, Ch. 343, L. 1974; AMD. Sec. 1, Ch. 141, L. 1975; R.C.M. 1947, 75-6903; AMD. Sec. 4, Ch. 334, L. 1979; AMD. Sec. 2, Ch. 148, L. 1981; AMD. Sec. 7, Ch. 337, L. 1989; AMD. Sec. 6, Ch. 466, L. 1993.)

34 CFR 300.320—Definitions of first priority children and second priority children

For the purposes of §§ 300.321-300.324, the term:

(a) "First priority children" means children with disabilities who-

(1) Are in an age group for which the State must make FAPE available under § 300.300; and

(2) Are not receiving any education.

(b) "Second priority children" means children with disabilities, within each disability category, with the most severe disabilities who are receiving an inadequate education.

(Authority: 20 U.S.C. 1412(3))

Note 1: After September 1, 1978, there should be no second priority children, since States must ensure, as a condition of receiving Part B funds for fiscal year 1979, that all children with

disabilities will have FAPE available by that date.

Note 2: The term "free appropriate public education," as defined in § 300.8, means special education and related services that * * * "are provided in conformity with an IEP" * * *.

New first priority children will continue to be found by the State after September 1, 1978, through ongoing efforts to identify, locate, and evaluate all children with disabilities.

34 CFR 300.321—Priorities

(a) Each SEA and LEA shall use funds provided under part B of the Act in the following order of priorities:

(1) To provide FAPE to first priority children, including the identification, location, and evaluation of first priority children.

(2) To provide FAPE to second priority children, including the identification, location, and evaluation of second priority children.

(3) To meet the other requirements of this part.

(b) The requirements of paragraph (a) of this section do not apply to funds that the State uses for administration under § 300.620.

(Authority: 20 U.S.C. 1411 (b)(1)(B), (b)(2)(B), (c)(1)(B), (c)(2)(A)(ii))

Note: SEAs, as well as LEAs, must use part B funds (except the portion used for State administration) for the priorities. A State may have to set aside a portion of its Part B allotment to be able to serve newly identified first priority children.

After September 1, 1978, Part B funds may be used-

(1) To continue supporting child identification, location, and evaluation activities;

(2) To provide FAPE to newly identified first priority children;

(3) To meet the full educational opportunity goal required under § 300.304, including employing additional personnel and providing inservice training, in order to increase the level, intensity and quality of services provided to individual children with disabilities; and

(4) To meet the other requirements of Part B.

34 CFR 300.322—[Reserved]

34 CFR 300.323—Services to other children

If a State or an LEA is providing FAPE to all if its first priority children, that State or LEA may use funds provided under Part B of the Act-

(a) To provide FAPE to children with disabilities who are not receiving any education and who are in the age groups not covered under § 300.300 in that State;

(b) To provide FAPE to second priority children; or

(c) Both.

(Authority: 20 U.S.C. 1411 (b)(1)(B), (b)(2)(B), (c)(2)(A)(ii))

34 CFR 300.324—Application of local educational agency to use funds for the second priority

An LEA may use funds provided underPart B of the Act for second priority children if it provides assurance satisfactory to the SEA in its application (or an amendment to its application)-

(a) That all first priority children have FAPE available to them;

(b) That the LEA has a system for the identification, location, and evaluation of children with disabilities, as described in its application; and

(c) That whenever a first priority child is identified, located, and evaluated, the LEA makes FAPE available to the child.

(Authority: 20 U.S.C. 1411 (b)(1)(B), (c)(1)(B); 1414 (a)(1)(C)(ii))

34 CFR 300.370—Use of State agency allocations

(a) The State may use the portion of its allocation that it does not use for administration under §§ 300.620-300.621:

(1) For support services and direct services in accordance with the priority requirements of §§300.320-300.324; and

(2) For the administrative costs of the State's monitoring activities and complaint investigations, to the extent that these costs exceed the administrative costs for monitoring and complaint investigations incurred during fiscal year 1985.

(b) For the purposes of paragraph (a) of this section-

(1) *"Direct services"* means services provided to a child with a disability by the State directly, by contract, or through other arrangements; and

(2) *"Support services"* includes implementing the comprehensive system of personnel development of §§ 300.380-300.383, recruitment and training of hearing officers and surrogate parents, and public information and parent training activities relating to FAPE for children with disabilities.

(Authority: 20 U.S.C. 1411(b)(2), (c)(2))

34 CFR 300.371—State matching

Beginning with the period July 1, 1978-June 30, 1979, and for each following fiscal year, the funds that a State uses for direct and support services under § 300.370 must be matched on a program basis by the State from funds other than Federal Funds. This requirement does not apply to funds that the State uses under § 300.360.

(Authority: 20 U.S.C. 1411 (c)(2)(B), (c)(4)(B))

Note: The requirement in § 300.371 would be satisfied it the State can document that the amount of State funds expended for each major program area (e.g., the comprehensive system of personnel development) is a least equal to the expenditure of Federal funds in that program area.

34 CFR 300.372—Applicability of nonsupplanting requirement

Beginning with funds appropriated for fiscal year 1979 and for each following fiscal year, the requirement in section 613(a)(9) of the Act, which prohibits supplanting with Federal funds, does not apply to funds that the State uses from its allocation under 300.706(a) for administration, direct services, or support services.

(Authority: 20 U.S.C. 1411(c)(3))

34 CFR 300.620—Federal funds for State administration

A State may use 5 percent of the total State allotment in any fiscal year under Part B of the Act, or $450,000, whichever is greater, for administrative costs related to carrying out Sections 612 and 613 of the Act. However, this amount cannot be greater than 25 percent of the State's total allotment for the fiscal year under Part B of the Act.

(Authority: 20 U.S.C. 1411(b), (c))

34 CFR 300.621—Allowable costs

(a) The SEA may use funds under § 300.620 for-

(1) Administration of the State plan and for planning at the State level, including planning, or assisting in the planning, of programs or projects for the education of children with disabilties;

(2) Approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of children with disabilties;

(3) Technical assistance to LEAs with respect to the requirements of this part;

(4) Leadership services for the program supervision and management of special edcuation activities for children with disabilties; and

(5) Other State leadership activities and consultative services.

(b) The SEA shall use the remainder of its funds under § 300.620 in accordance with § 300.370.

(Authority: 20 U.S.C. 1411(b),(c))

10.16.2101—Special Education Pupil

(1) Special Education pupil refers to a student who spends less than half time in the regular program and the balance of the time in school in the special education program, shall be considered a full-time special pupil and shall not be considered regularly enrolled for ANB purposes. If a student spends half or more of the time in school in the regular program and the balance of the time in the special education program, the student shall be considered regularly enrolled for ANB purposes.

(a) A student who spends time in school in the regular program, while also receiving supplementary aid and services from special education, will be considered a regularly enrolled student for that period of time.

(2) Current year refers to the fiscal year which is in progress during budget preparation.

(3) Ensuing year refers to the period of time for which the budget is being prepared. (History: Sec. 20-7-403, MCA; IMP, Sec. 20-7-403, MCA; NEW, 1977 MAR p. 314, Eff. 8/26/77, ARM Pub, 11/26/77; AMD, 1992 MAR p. 213, Eff. 2/14/92.)

Caseload Requirements

10.16.1302—Resource Instruction and Service

(1) Instruction from a resource service requires that the special education teacher be available to provide direct service to students with disabilities who are enrolled in the regular instructional program. Resource instruction may be provided by a resource teacher working with students with disabilities in the regular classroom or by removing the students to a separate resource room for some part of the school day. A student should not be removed from the regular classroom to a separate resource room unless the move is essential in meeting the specific needs of a child. The resource teacher is responsible for ongoing consultation and communication with the child's regular classroom teacher(s) regarding specific needs and recommendations of materials and instructional procedures and to exchange information for parent conferences. The resource teacher and the regular instructional staff should coordinate their efforts and expertise frequently and systematically to best serve the student.

(2) The special education teacher assigned to a resource program is responsible for assisting in child study team assessment, translating strategies, preparing materials, providing instruction, maintaining appropriate records of progress, and conferring with parents and regular teachers. The resource teacher should periodically follow-up on children who have been phased out of special education programs to determine their progress in the regular classroom.

(3) Space and equipment needed to support the resource service must be provided. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1979 MAR p. 359, Eff. 3/31/79.)

10.16.1303—Caseload of a Resource Service

(1) A teacher of a resource service should have a minimum caseload of eight students with disabilities per day before establishing a first full-time service. The maximum number of students assigned to each resource service should not exceed 25 students per week. In situations where fewer than eight students per day can be documented for a first full-time service or where fewer than 25 students per week can be documented in an established service, the full-time equivalent to be approved shall be negotiated with the office of public instruction based on special education needs of the children. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1979 MAR p. 359, Eff. 3/31/79; AMD, 1983 MAR p. 1668, Eff. 11/11/83.)

10.16.1304—Adding Resource Services

(1) If a school district is considering adding resource services, the district must first establish that at least 18 students with disabilities and/or 150 contact hours are accommodated in existing services. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1979 MAR p. 359, Eff. 3/31/79; AMD, 1983 MAR p. 1668, Eff. 11/11/83.)

10.16.1306—Itinerant Resource Speech and Hearing Services

(1) Speech and hearing services traditionally operate on an itinerant resource model. Personnel requirements are found in the special education regulations.

(2) The caseload for a speech pathologist depends on the severity of the students with disabilities to be served. The suggested range is from 15 to 60 children. Exceptions are to be negotiated with the superintendent of public instruction.

(3) When an audiologist is working in a therapeutic capacity, that individual has the caseload recommended for a speech pathologist. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1979 MAR p. 359, Eff. 3/31/79; AMD, 1983 MAR p. 1668, Eff. 11/11/83.)

10.16.1307—Self-Contained Instruction

(1) Service through special self-contained instruction results when the child study team determines that a child exhibits an intellectual, adaptive, learning, social and/or emotional impairment so severe that removal from the regular instructional program for more than 50 percent of the school day is essential and that education in a regular instructional program with the assistance of resource instruction will not provide an appropriate education.

(2) The teacher in a self-contained program is responsible for assisting in the child study team assessment, translating assessment findings into appropriate educational objectives and implementing and evaluating instructional procedures necessary to achieve these objectives. To ensure that capable students have an opportunity to return to the regular instructional program, it is important that a thorough system of referral, assessment, programming, and termination be developed. Communication with the regular instructional staff, particularly with the regular classroom teacher, is of utmost importance and requires careful planning by all concerned.

(3) The age range of children assigned to a self-contained classroom should be considered in establishing the composition of the class. Chronological age range greater than six years is not recommended. The actual range should be determined by the school administration utilizing the recommendations of the child study team.

(4) A minimum of four students with disabilities needing removal from the regular instructional program for more than 50 percent of the school day is required for a self-contained class. The school administration shall determine the number of students assigned to the program by utilizing the recommendations of the child study team. The type and severity of the disability of the students should be considered in recommending class size. It is recommended that self-contained classes not exceed 12 students.

(5) Once a self-contained class reaches the maximum number of students as recommended by the child study team, the school administration must give consideration to providing the teacher with additional child management help, such as an aide, so that the class may accommodate more students with disabilities. Dividing the class after these alternatives have been utilized is an administrative decision which must take the child study team recommendations into consideration, as well as the recommendations for student/teacher ratios given in ARM 10.16.1307. If a self-contained class is at minimum levels, consideration should be given to utilizing the class so it provides resource instruction accommodating other students with disabilities.

(6) Self-contained service is non-categorical and a self-contained service may serve a combination of disabilities as long as the needs of the children assigned to the service are appropriately met through this program option.

(7) Space and equipment needed to support the self-contained class must be provided. The classroom should be in a school building and should be comparable to regular classrooms in that school district. Children with disabilities shall not be discriminated against because of the lack of appropriate facilities. Any deviation of special education classrooms must receive approval from the superintendent of public instruction.

(8) The length of the school day follows provisions established in Section 20-1-302, MCA, unless the child, for physical reasons, cannot attend for the standard school day. This determination will be made by the child study team. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, 20-7-

414, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77.)

10.16.1804—School Psychologist

A full-time school psychologist must serve a minimum population base of approximately 1,500 regular students. In special circumstances, student base may not be appropriate. Exceptions may be negotiated with the office of public instruction. School districts that do not meet the minimum population base should consider cooperative programs between districts. Partial assignment of school psychologists to programs will be determined by prorating the minimum figure stated to the actual enrollment of the schools served. Approval to serve less than the minimal base may be considered by the superintendent of public instruction when a request is made. (History: Sec. 20-7-403, MCA; IMP, Secs. 20-7-403(2), 20-7-403(7), MCA; NEW, 1977 MAR o. 324, Eff. 8/26/77, ARM Pub. 11/26/77.)

10.16.1805—Supervisor of Special Education

(1) For budgeting approval, a full-time supervisor of special education must have a minimum of at least 12 full-time special education personnel or a regular student population of 3,000 regular students. School districts are encouraged to establish cooperative special education programs under the direction of one supervisor of special education in order to meet minimum approval levels. Consideration should be given to include rural schools under this individual's supervision even though the rural school may not have a special education teacher.

(2) For school districts that have special education personnel in excess of the minimum stated, additional full-time, three-quarter time, or half-time supervisors may be added upon request to and approval of the superintendent of public instruction. For school districts that have fewer education personnel than the minimum stated, three-quarter or half-time supervisors of special education may be added upon request to and approval of the superintendent of public instruction. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1980 MAR p. 2397, Eff. 8/15/80.)

10.16.1806—Social Workers

(1) A full-time social worker must serve a minimum population base of approximately 3,000 regular students and/or have an assigned caseload of 25 to 60 families per year. In special circumstances, student base may not be appropriate. Exceptions may be negotiated with the office of public instruction. The social workers shall serve children requiring special education through group or individual casework practice, consultation with school personnel and counseling with parents and students. The social worker shall be available to participate in child study teams when the need is indicated. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77.)

10.16.1807—Counselor

(1) A full-time counselor serving only special education must serve a minimum population base of approximately 3,000 regular students. In special circumstances, student base may not be appropriate. Exceptions may be negotiated with the office of public instruction. The counselor must have a full-time assigned caseload of special education students requiring counseling on an instructional, behavioral, or emotional adjustment related to the students' disabilities. The counselor should be available to participate in child study teams when the need is indicated.

(2) If a school district budgets for and provides counseling services to, students with disabilities under special education, all of the students involved must also receive instructional special education services. Students needing only counseling are not eligible for special education counseling. These students are considered regular pupils and receive their total support from the regular program including counseling. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77.)

10.16.1808—Other

(1) Before a school district employs full-time nurses, physical therapists or occupational therapists to serve special education programs, that district must justify the position to receive approval from the superintendent of public instruction. (History: Sec. 20-7-402, MCA; IMP, 20-7-403, MCA; NEW, 1977 MAR p. 277, Eff. 8/26/77.)

Transportation

Montana Statutes for Special Education

20-7-441. Special education child eligibility for transportation. With the approval of the superintendent of public instruction, any special education child shall be eligible for transportation, which shall be provided by the resident district, when he is enrolled:

(1) in a special education class or program operated by the district of such child's residence;

(2) in a special education class or program operated by a Montana district other than the child's resident district;

(3) under an approved tuition agreement in a special education class or program operated outside of the state of Montana; or

(4) under an approved tuition agreement in a private institution.

(History: En. 75-7814 by Sec. 432, Ch. 5, L. 1971; AMD. Sec. 14, Ch. 539, L. 1977; R.C.M. 1947, 75-7814.)

20-7-442. State transportation reimbursement for special education children. Districts providing children with transportation to a special education class or program and complying with the special education transportation regulations promulgated by the superintendent of public instruction shall be eligible for a transportation reimbursement. The reimbursement shall be calculated from a schedule established by the superintendent of public instruction with the state providing 50 percent of the reimbursement. (History: En. 75-7815 by Sec. 433, Ch. 5, L. 1971; R.C.M. 1947, 75-7815; AMD. Sec.4, Ch. 711, L. 1991; AMD. Sec. 1, Ch. 9, Sp. L. July 1992.)

10.16.2501—Definition

(1) Specialized transportation for children and youth with disabilities is a related service which is necessary in order for a child or youth with disabilities to benefit from special education. It includes, but is not limited to:

(a) travel to and from school and between schools;

(b) specialized equipment, i.e., special or adapted buses and lifts, if required to provide special transportation for children or youth with disabilities; and

(c) travel to and from services listed in the student's individual education plan (IEP). (History: Sec. 20-7-442, MCA; IMP, Sec. 20-3-106, MCA; NEW, 1986 MAR p. 1383, Eff. 8/15/86.)

10.16.2502—Eligibility

(1) Specialized transportation needs must be documented in the IEP of a child or youth with disabilities as a related service. (History: Sec. 20-7-442, MCA; IMP, Sec. 20-3-106, MCA; NEW, 1986 MAR p. 1383, Eff. 8/15/86.)

10.16.2107—Transportation for Special Education Children

(1) With the approval of the superintendent of public instruction, any special education child shall be eligible for resident district transportation pursuant to Section 20-7-441, MCA.

(2) Special student transportation for children with disabilities to and from school is not an allowable cost under the special education budget in the general fund. Budget authority for transportation of children with disabilities must be established in the transportation fund of the local school district and must follow the budgeting procedures established in the Montana School Accounting Manual.

(3) Procedures for specialized transportation for children with disabilities is set out in subchapter 25 of this chapter. (History: Sec. 20-7-403, MCA; IMP, Secs. 20-7-403, 20-10-145, MCA; NEW, 1977 MAR p. 315, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1983 MAR p. 1669, Eff. 11/11/83; AMD, 1992 MAR p. 213, Eff. 2/14/92.)

(1) For the purposes of capacity rating, the capacity of the bus prior to alteration for special education shall be the capacity used for reimbursement.

(2) All special education buses are deemed to have met the student load requirement of the law and are deemed to be full.

(3) On buses approved by the superintendent of public instruction as special buses, an additional one-third of the on-schedule amount shall be paid to the school district.

(4) On individual transportation contracts where a special education student is transported, an additional one-third of the on-schedule amount shall be paid to the district. (History: Sec. 20-7-442, MCA; IMP, Sec. 20-3-106, MCA; NEW, 1986 MAR p. 1383, Eff. 8/15/86.)

Tuition

Montana Statutes for Special Education

1-1-215. Residence—rules for determining. Every person has, in law, a residence. In determining the place of residence, the following rules are to be observed:

(1) It is the place where one remains when not called elsewhere for labor or other special or temporary purpose and to which he returns in seasons of repose.

(2) There can only be one residence.

(3) A residence cannot be lost until another is gained.

(4) The residence of his parents or, if one of them is deceased or they do not share the same residence, the residence of the parent having legal custody or, if neither parent has legal custody, the residence of the parent with whom he customarily resides is the residence of the unmarried minor child. In case of a controversy, the district court may declare which parental residence is the residence of an unmarried minor child.

(5) The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian.

(6) The residence can be changed only by the union of act and intent.

20-7-420. Residency requirements—financial responsibility for special education. (1) In accordance with the provisions of 1-1-215, a child's district of residence for special education purposes is the residence of the child's parents or of the child's guardian if the parents are deceased, unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent's last known district of residence is the child's district of residence.

(2) The county of residence is financially responsible for tuition and transportation as established under 20-5-323 for a child with disabilities, as defined in 20-7-401, including a child who has been placed by a state agency in a foster care or group home licensed by the state. The county of residence is not financially responsible for tuition and transportation for a child with disabilities who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility.

(3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential treatment facility or children's psychiatric hospital, as defined in 20-7-436, and the educational services are provided by a public school district under the provisions of 20-7-411 or 20-7-435, the superintendent of public instruction shall reimburse the district providing the services for the negotiated amount, as established pursuant to 20-7-435(5), that represents the district's costs of providing education and related services. Payments must be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall pay the remaining balance from the state equalization aid account. However, the amount spent from the state equalization aid account for this purpose may not exceed $500,000 during any biennium.

(4) Under the provisions of 20-7-422(3), the superintendent of public instruction shall provide funds for the education fees required to provide a free appropriate public education for a child with disabilities who is in need of special education and related services and is placed by a state agency in an out-of-state private residential facility or out-of-state public school, provided that, in determining the special education services needed for the child with disabilities, the district of residence has complied with the rules promulgated under 20-7-402.

(5) A state agency that makes a placement of a child with disabilities is responsible for the financial costs of room and board and the treatment of the child. (History: En. Sec. 1, Ch. 470, L. 1979; AMD. Sec. 4, Ch. 765, L. 1991; AMD. Sec. 1, Ch. 375, L. 1993; AMD. Sec. 10, Ch. 563, L. 1993.)

20-7-421. Arranging attendance in another district in lieu of a special education program—tuition. (1) In accordance with a placement decision made by persons determining an individualized education program for a child with disabilities, the trustees may arrange for the attendance of a child in need of special education and related services in another district within the state of Montana.

(2) Tuition and transportation as required under 20-5-323 may be charged as provided in 20-7-420. (History: En. 75-7808 by Sec. 426, Ch. 5, L. 1971; AMD. Sec. 1, Ch. 140, L. 1975; AMD. Sec. 9, Ch. 539, L. 1977; R.C.M. 1947, 75-7808; AMD. Sec. 2, Ch. 470, L. 1979; AMD. Sec. 2, Ch. 481, L. 1979; AMD. Sec. 2, Ch. 661, L. 1979; AMD. Sec. 5, Ch. 765, L. 1991; AMD. Sec. 2, Ch. 375, L. 1993; AMD. Sec. 11, Ch. 563, L. 1993.)

20-7-422. Out-of-state placement of children with disabilities—payment of costs. (1) In accordance with a placement made by persons determining an individualized education program for a child with disabilities, the trustees of a district may arrange for the attendance of the child in a special education program offered outside of the state of Montana.

(2) Except as provided in subsection (3), when the persons determining the individualized education program of a child with disabilities who is in need of special education recommend placement in an out-of-state private residential facility, the trustees of the district of residence shall negotiate the amount and manner of payment of all costs associated with the placement.

(3) Whenever a child with disabilities, who is in need of special education and related services, is adjudicated by a court of competent jurisdiction to be an abused, neglected, or dependent child as defined in 41-3-102 or a youth in need of supervision or delinquent youth as defined in 41-5-103 and is placed by a state agency in an out-of-state private residential facility, the superintendent of public instruction shall negotiate with:

(a) the provider for the amount and manner of payment of education fees consistent with the individualized education program determined for the child under the provisions of 20-7-402; and

(b) the state agency that makes the placement for the portion of the placement costs that represents the child's education program.

(4) Payments for a child with disabilities as negotiated in subsection (3) must be paid by the superintendent of public instruction from the state special education appropriation. (History: En. 75-7809 by Sec. 427, Ch. 5, L. 1971; AMD. Sec. 2, Ch. 140, L. 1975; AMD. Sec. 10, Ch. 539, L. 1977; R.C.M. 1947, 75-7809; AMD. Sec. 3, Ch. 661, L. 1979; AMD. Sec. 24, Ch. 609, L. 1987; AMD. Sec. 18, Ch. 11, Sp. L. June 1989; AMD. Sec. 6, Ch. 765, L. 1991; AMD. Sec. 3, Ch. 375, L. 1993; AMD. Sec. 12, Ch. 563, L. 1993.)

20-7-424. No tuition when attending state institution. Whenever a child is attending a state-funded institution in Montana, the resident district or county is not required to pay tuition to the state institution for the child, but whenever at the recommendation of institution officials the child attends classes conducted by a school within a local district, the district or county where the parents or guardian of the child maintains legal residence shall pay tuition to the district operating the school in accordance with the provisions of 20-5-321 or 20-7-421, whichever section applies to the circumstances of the child. Transportation payments must be made for students enrolled in any school district classes or receiving training, including summer sessions, at the state institution. The schedule of transportation payments must be approved in accordance with existing transportation payment schedules and must be approved by the county transportation committee and the superintendent of public instruction. (History: En. 75-7810 by Sec. 428, Ch. 5, L. 1971; AMD. Sec. 1, Ch. 282, L. 1971; AMD. Sec. 1, Ch. 45, L. 1973; AMD. Sec. 7, Ch. 91, L. 1973; R.C.M. 1947, 75-7810; AMD. Sec. 13, Ch. 563, L. 1993.)

20-7-435. Funding of educational programs at in-state children's psychiatric hospitals and in-state residential treatment programs for eligible children with emotional disturbances. (1) It is the intent of the legislature that eligible children in in-state children's psychiatric hospitals and residential treatment facilities be provided with an appropriate educational opportunity in a cost-effective manner, including the provision of a free appropriate public education for eligible children with disabilities that is consistent with state standards for the provision of special education and related services. General education programs for eligible children without

disabilities must be provided in accordance with the requirements for a nonpublic school under the provisions of 20-5-109.

(2) The superintendent of public instruction may contract with an in-state children's psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in the hospital or treatment facility.

(3) Whenever the superintendent of public instruction contracts with an in-state children's psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in the children's psychiatric hospital or residential treatment facility, the superintendent of public instruction shall:

(a) ensure the provision of a free appropriate public education and an education that is consistent with the requirements for a nonpublic school in 20-5-109 for children attending the hospital or residential treatment facility;

(b) negotiate the approval of allowable costs under the provisions of 20-7-431 for allowable costs for providing special education, including the costs of retirement benefits, federal social security system contributions, and unemployment compensation insurance;

(c) from appropriations provided for this purpose, fund any approved allowable costs under this section, with the exception of services for which reimbursement is made under any provision of state or federal law or an insurance policy; and

(d) provide funding for allowable costs according to a proration based on average daily membership.

(4) A supplemental education fee or tuition may not be charged for an eligible Montana child who receives inpatient treatment and an education under contract with an in-state children's psychiatric hospital or residential treatment facility.

(5) If a children's psychiatric hospital or residential treatment facility fails to provide an education in accordance with 20-5-109 or a free appropriate public education under the provisions of this part for an eligible child at the children's psychiatric hospital or residential treatment facility or fails to negotiate a contract under the provisions of subsection (2), the superintendent of public instruction shall negotiate with the school district in which the children's psychiatric hospital or residential treatment facility is located for the supervision and implementation of an appropriate educational program that is consistent with accreditation standards provided for in 20-7-111 and with the provisions of 20-7-402 for children attending the children's psychiatric hospital or residential treatment facility. The amount negotiated with the school district must include all education and related services costs that may be negotiated under the provisions of subsection (3) and all education and related services costs necessary to fulfill the requirements of providing the child with an education.

(6) Funds provided to a district under this section, including funds received under the provisions of 20-7-420:

(a) must be deposited in the miscellaneous programs fund of the district that provides the education program for an eligible child, regardless of the age or grade placement of the child who is served under a negotiated contract; and

(b) are not subject to the budget limitations in 20-9-308.

(History: En. Sec. 9, Ch. 765, L. 1991; AMD. Sec. 4, Ch. 375, L. 1993; AMD. Sec. 51, Ch. 633, L. 1993.)

20-7-436. Definitions. For the purposes of 20-7-435 and this section, the following definitions apply:

(1) (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that:

(i) has the primary purpose of providing clinical care for children whose clinical diagnosis and resulting treatment plan require in-house residential psychiatric care; and

(ii) is accredited by the joint commission on accreditation of health care organizations, the standards of the health care financing administration, or other comparable accreditation.

(b) The term does not include programs for children and youth that have the treatment of chemical dependency as the primary reason for treatment.

(2) "Eligible child" means a child or youth who is less than 19 years of age and is emotionally disturbed as defined in 20-7-401 or 52-2-101 and whose emotional problem is so severe that the child or youth has been placed in a children's psychiatric hospital or residential treatment facility for inpatient treatment of emotional problems.

(3) (a) "Residential treatment facility" means a facility in the state that:

(i) provides services for children with emotional disturbances;

(ii) operates for the primary purpose of providing residential psychiatric care to persons under 21 years of age;

(iii) is licensed by the department of health and environmental sciences; and

(iv) participates in the Montana medicaid program for psychiatric facilities or programs providing psychiatric services to individuals under 21 years of age; or

(v) notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv), has received a certificate of need from the department of health and environmental sciences pursuant to Title 50, Chapter 5, Part 3, prior to January 1, 1993.

(b) The term does not include programs for children and youth who have the treatment of chemical dependency as a primary reason for treatment. (History: En. Sec. 10, Ch. 765, L. 1991; AMD. Sec. 5, Ch. 375, L. 1993.)

10.16.1312—Eligible Tuition Categories

(1) To be eligible to receive tuition, special education programs must be in compliance with board of public education policies and approved by the superintendent of public instruction.

(2) The responsible school official of the receiving school district shall use the categories defined below to determine special education tuition rates. These categories apply only to calculation of tuition for students receiving special education services for more than one-half of the school day. The special education services upon which these calculations are based must be

identified on the student's current Individualized Education Program (IEP) plan.

(a) Category 1 includes students who receive special education and related services for more than one-half of the school day but less than twenty (20) hours per week.

(b) Category 2 includes students who receive special eduction and related services from twenty (20) hours per week to thirty (30) per week. Students in this category require services to be provided in a highly structured environment requiring close supervision and management.

(c) Category 3 includes students who receive special education and related services for thirty (30) hours or more per week. Students in this category receive related services at least one (1) hour per day, five (5) days per week. Students require continual and direct supervision and may require a ratio of one (1) teacher or aide under the direct supervision of a teacher to three (3) students. (History: Secs. 20-5-305, 20-5-312, MCA; IMP, Secs. 20-5-305, 20-5-312, MCA; NEW, 1988 MAR p. 714, Eff. 4/15/88; AMD, 1992 MAR p. 1365, Eff. 6/26/92.)

10.16.1314—Formula for Special Education Tuition Rates

(1) The following formula shall be used by school districts to calculate maximum special education tuition rates to be paid in the ensuing school fiscal year, using data available on March 15 of the current school fiscal year.

(a) The total district foundation program funding for the prior school fiscal year, without special education payments, shall be divided by the ANB number used to determine that foundation program amount. This is the district foundation program funding per ANB.

(b) The figure calculated in (a), district foundation program funding per ANB, shall be used to determine the maximum special education tuition rates as follows:

(i) Category 1: District foundation program funding per ANB times 1.00;

(ii) Category 2: District foundation program funding per ANB times 1.50;

(iii) Category 3: District foundation program funding per ANB times 2.00.

(c) Nothing within the rules for calculating the maximum special education tuition rates shall prevent school districts from agreeing to lesser rates.

(d) Higher special education tuition rates may be negotiated between the school districts if the county superintendent determines that at least one of the following conditions is met:

(i) The calculated tuition amount under-represents the additional costs of services for the student due to the unique nature of the student's Individualized Education Program (IEP).

(ii) The services necessary for implementation of the student's IEP require program expansion.

(iii) The lack of special education contingency funds necessitates the addition of services without supplemental state special education funding.

(2) The calculations used to determine the special education tuition rate and documentation of the number of hours of special education services to each student per week shall be provided by the trustees as part of the tuition reports to the county superintendent, pursuant to

Sections 20-5-306 and 20-5-312, MCA. The county superintendent shall provide a copy of the calculations and documentation of the number of hours of special education services to each student per week to the superintendent of each county in which the reported students reside. In turn, each county superintendent shall provide a copy of the calculations and documentation of the number of hours of special education services to each student per week to each school district in the county which owes tuition amounts to other school districts for special education students, and to each parent who owes tuition payments for a special education student.

(3) The special education tuition rate calculation should be adjusted for the portion of the year the student is enrolled in special education services in the receiving school district. (History: Secs. 20-5-305, 20-5-312, MCA; IMP, Secs. 20-5-305, 20-5-312, MCA, NEW, 1988 MAR p. 714, Eff. 4.15/88; AMD, 1990 MAR p. 717, Eff. 4/13/90; AMD, 1992 MAR p. 211, Eff. 2/14/92; AMD, 1992 MAR p. 1365, Eff. 6/26/92.)

10.16.1315—Contested Cases

(1) Contested cases regarding tuition calculation will be addressed through the procedures outlined in Title 10, Chapter 6, ARM, Rules of Procedure for All School Controversy Contested Cases Before the County Superintendents of the State of Montana. (History: Sec. 20-3-107, MCA; IMP, Sec. 20-3-210, MCA; NEW, 1988 MAR p. 714, Eff. 4/15/88.)

Cooperatives

Montana Statutes for Special Education

20-7-451. Authorization to create full service education cooperatives. (1) A school district may contract with one or more other school districts to establish a cooperative to perform any or all education administrative services, activities, and undertakings that the school district entering into the contract is authorized by law to perform. The cooperative contract must be authorized by the boards of trustees of the districts entering into the contract.

(2) A cooperative contract may allow money allocated to a cooperative to be expended for:

(a) recruitment of professionals or employees for the cooperative; and

(b) facility rental and supportive services, including but not limited to janitorial and communication services. (History: En. Sec. 1, Ch. 471, L. 1979; AMD. Sec. 1, Ch. 156, L. 1985; AMD. Sec. 2, Ch. 343, L. 1989; AMD. Sec. 1, Ch. 136, L. 1991.)

20-7-452. Detailed contents of full service education cooperative contracts. The contract authorized in 20-7-451 may include all necessary and proper matters, but must specify the following:

(1) its duration, which may not be less than three years for purposes of providing special education services;

(2) the precise organization, composition, and nature of the cooperative;

(3) the purpose of the cooperative;

(4) the manner of financing the cooperative and establishing and maintaining a budget for the cooperative;

(5) the permissible method to be employed in accomplishing the partial or complete termination of the cooperative agreement and for disposing of property upon partial or complete termination;

(6) provision for a management board that is responsible for administering the cooperative and that is comprised of trustees of the contracting districts or their authorized representatives;

(7) the manner of acquiring, holding, and disposing of real and personal property used by the cooperative; and

(8) any other necessary and proper matters.

(History: En. Sec. 2, Ch. 471, L. 1979; AMD. Sec. 3, Ch. 343, L. 1989; AMD. Sec. 2, Ch. 136. L. 1991.)

20-7-453. Submission of agreement to attorney general. (1) Every contract made under the provisions of 20-7-451 through 20-7-456 must, as a condition precedent to its performance, be submitted to the attorney general who must determine whether the contract is in proper form and compatible with the laws of Montana.

(2) The attorney general must approve any contract submitted to him pursuant to 20-7-451 unless he finds that it does not meet the conditions set forth in 20-7-451 and 20-7-452, in which case he must detail, in writing addressed to the school districts concerned, the specific respects in which the proposed contract fails to meet the requirements of law. Failure to disapprove a contract within 30 days of its submission constitutes approval of the contract by the attorney general. (History: En. Sec. 3, Ch. 471, L. 1979.)

20-7-454. Final approval and filing of full service education cooperative contract. Within 10 days after approval by the attorney general and prior to commencement of its performance, a full service education cooperative contract made pursuant to 20-7-451 through 20-7-456 must be:

(1) submitted to the superintendent of public instruction who has final approval authority pursuant to the policies of the board of public education;

(2) filed with the county clerk and recorder of the county or counties in which the school districts involved are located; and

(3) filed with the secretary of state.

(History: En. Sec. 4, Ch. 471, L. 1979; AMD. Sec. 3, Ch. 136, L. 1991.)

20-7-455. Authorization to appropriate funds for purpose of full service education cooperative contract. A school district entering into a full service education cooperative contract pursuant to 20-7-451 through 20-7-456 may appropriate funds for and may sell, lease, or otherwise give or supply to the administrative officer, management board, or joint board created for the purpose of performance of the cooperative contract such material, personnel, or services as may be within its legal power to furnish. (History: En. Sec. 5, Ch. 471, L. 1979; AMD. Sec. 4, Ch. 136, L. 1991.)

20-7-456. Tenure of teachers employed by cooperatives. (1) Teachers who have tenure rights with a district and are employed by a cooperative of which their district is a member do not lose their tenure with the district.

(2) Nontenured teachers employed by a cooperative acquire tenure with a cooperative in the same manner as prescribed in 20-4-203, and the provisions of 20-4-204 through 20-4-207 are applicable to teachers employed by a cooperative.

(3) Tenure for a teacher employed by a cooperative is acquired only with the cooperative and not with a member school district of a cooperative.

(4) For the purposes of tenure of a teacher employed by a cooperative, cooperative contract renewals may not be used to limit the teacher's progress toward tenure status. (History: En. Sec. 6, Ch. 471, L. 1979; AMD. Sec. 5, Ch. 136, L. 1991.)

20-7-457. Funding provisions for special education purposes of cooperatives or joint boards. (1) The superintendent of public instruction shall pay directly to a cooperative or to a joint board formed under 20-3-361 prior to July 1, 1992, for special education purposes the special education allowable cost payments determined pursuant to 20-9-321.

(2) A school district that elects to participate in a cooperative for special education purposes shall agree in the cooperative contract to participate for a period of at least three years.

(3) A school district that elects to participate in a joint board formed under 20-3-361 for special education purposes shall confirm in writing to the joint board by October 1 of the current school fiscal year the district's intention to participate or to not participate in a joint board agreement for the next school fiscal year.

(4) A cooperative that has not met the requirements of 20-7-453 and 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction. The superintendent shall adopt rules for approval of full service education cooperatives.

(5) A full service education cooperative may establish a retirement fund, a miscellaneous programs fund, and a transportation fund, as provided for in 20-9-201, for the purposes of a full service education cooperative contract and the purposes allowed by law.

(6) Before July 1, 1994, the superintendent of public instruction, after consulting with regional representatives, shall define boundaries for cooperatives established for special education programs that incorporate the territory of all public school districts.

(7) Restructuring of cooperatives established for providing special education services must:

(a) be limited to a statewide total of no more than 23;

(b) include districts that are adjacent to each other and not overlapping into another cooperative's territory; and

(c) provide that all districts located within a cooperative's boundary may voluntarily become a cooperative member. (History: En. Sec. 4, Ch. 343, L. 1989; AMD. Sec. 6, Ch. 136, L. 1991; AMD. Sec. 4, Ch. 568, L. 1991; AMD. Sec. 2, Ch. 466, L. 1993.)

20-7-458. (Temporary) Reduced caseloads for qualifying cooperatives or joint boards. The superintendent of public instruction may reduce the caseloads for any itinerant special education personnel of a full service education cooperative or a joint board formed under 20-3-361 for special education purposes if the cooperative or joint board meets the requirements of 20-7-457. The superintendent shall adopt rules to determine the eligibility of a cooperative or a joint board for reduced caseloads under this section.(Repealed effective July 1, 1994—Secs. 9, 10(2), Ch. 466, L. 1993.) (History: En. Sec. 5, Ch. 343, L. 1989; AMD. Sec. 7, Ch. 136, L. 1991.)

20-9-701. Definitions of prime and cooperating agencies. For the purposes of an interlocal cooperative agreement, the prime agency shall be the district or other public agency vested with the financial administration of the interlocal cooperative agreement under the terms of such agreement and the cooperating agency shall be any district or public agency other than a prime agency who is a party to the contract creating the interlocal cooperative agreement. (History: En. 75-7305 by Sec. 360, Ch. 5, L. 1971; R.C.M. 1947, 75-7305.)

20-9-511. Interlocal cooperative agreement fund. The trustees of any district serving as a prime agency under an interlocal cooperative agreement shall establish an interlocal cooperative fund under the provisions of 20-9-703 for the financial administration of the interlocal cooperative agreement. Such fund shall be a nonbudgeted fund and shall be financially administered under the provisions of this title for a nonbudgeted fund. (History: En. 75-7216 by Sec. 355, Ch. 5,L. 1971; R.C.M. 1947, 75-7216.)

10.16.2106—Special Education Programs Provided by a Cooperative

(1) Each application for a special education program provided by a cooperative shall be submitted through a single district or county superintendent. The application shall identify the districts to be served, the projected population, and the services to be provided through the cooperative. (History: Sec. 20-7-457, MCA; IMP, Secs. 20-7-457, MCA; NEW, 1977 MAR p. 315, Eff. 8/26/77, ARM Pub. 11/26/77; AMD, 1983 MAR p. 1669, Eff. 11/11/83; AMD, 1992 MAR p. 213, Eff. 2/14/92.)

10.16.2601—Duration of Cooperative

(1) The interlocal agreement creating a cooperative must provide for a term of at least three years encompassing state fiscal years.

(2) A district that elects to participate shall agree to participate for a period consistent with the term of the existing interlocal agreement.

(3) Notification of intent to withdraw from a cooperative shall be provided no later than October 1 of the third year of the district's participation.

(4) Interlocal agreements, recognizing the time requirements stated above, may provide for the following options:

(a) a three-year commitment, renewable annually;

(b) a schedule of withdrawal notice on a three-year cycle.

(History: Sec. 20-7-457, MCA; IMP, 20-7-452, MCA; NEW, 1990 MAR p. 1252, Eff. 6/29/90.)

10.16.2602—Management Board

(1) The management board is responsible for administering the cooperative and is comprised of trustees of the contracting districts or their authorized representatives.

(2) Designation of the representative shall be by formal action taken annually. Formal action shall be in the form of a resolution of the trustees of a contracting district which names one of the trustees or an authorized representative to serve on the management board. The same person may be the authorized representative of more than one board of trustees.

(3) The interlocal agreement shall specify the voting powers of the member districts. (History: Sec. 20-7-457, MCA; IMP, 20-7-452, MCA; NEW, 1990 MAR p. 1252, Eff. 6/29/90.)

10.16.2603—Approval of Cooperatives

(1) This approval criteria will act as a guidance model for the superintendent of public instruction to determine whether a cooperative formed after June 30, 1990, is eligible for certain funding (ARM 10.16.2606) from the state special revenue fund for state equalization aid. Attorney general approved cooperatives formed prior to June 30, 1990, are not subject to these approval criteria unless there are changes to the structure and service pattern of the cooperative. If changes occur, they must be in the direction of the approval criteria but not necessarily achieve the criteria. The approval criteria is as follows:

(a) Enrollment. A total school district enrollment of 3,000 or more, except in the case where a cooperative services a four-county area which does not reach 3,000 student enrollment.

(b) Number of schools participating. The required number of schools participating is dependent upon total enrollment of schools; generally 10 or more school districts.

(c) Geography of participating districts. All schools within the service boundaries of the cooperative shall be included unless they are a "stand-alone" district whose enrollment is 3,000 or more.

(d) Caseload. The caseload shall be sufficient to meet requirements of the superintendent of public instruction for employment of no less than 2 FTE speech therapists and 2 FTE school psychologists.

(e) Service pattern. It shall be a full service special education cooperative, making available itinerant services in the form of speech pathology, school psychology, occupational therapy, physical therapy, and itinerant instructional services through employment of or contract with these professionals.

(f) Any other factors determined to be relevant by the superintendent of public instruction. (History: Sec. 20-7-457, MCA; IMP, 20-7-452, MCA; NEW, 1990 MAR p. 1252, Eff. 6/29/90.)

10.16.2604—Non-Participating Districts

(1) The interlocal agreement shall provide that notification of opportunity to join shall be provided annually to nonparticipating districts with a student enrollment of under 3,000 within the geographic service pattern of the cooperative. (History: Sec. 20-7-457, MCA; IMP, 20-7-452, MCA; NEW, 1990 MAR p. 1252, Eff. 6/29/90.)

10.16.2605—Approval Mechanics

(1) A draft of the interlocal agreement shall be submitted to the superintendent of public instruction for initial review and approval on or before December 1. Upon completion of initial review and approval by the superintendent, the agreement shall be submitted to the attorney general. Within 10 days of the attorney general's approval, the agreement shall be submitted to the superintendent for final approval. Upon final approval, the cooperative contract shall be filed with the county clerk and recorder of the county or counties in which the school districts involved are located and with the secretary of state. (History: Sec. 20-7-457, MCA; IMP, 20-7-453, 20-7-454, MCA; NEW, 1990 MAR p. 1252, Eff. 6/29/90.)

10.16.2606—Funding of Itinerant Personnel with Reduced Caseloads

(1) Cooperatives meeting the standards for approval may receive funding based on reduced caseloads. Funding is provided only for approved cooperatives for personnel assigned to service multiple school districts in the cooperative.

(2) Minimum caseloads for itinerant personnel (school psychologists, speech therapists, occupational therapists, physical therapists) may be as much as 20 percent less than caseload requirements for non-qualifying cooperatives or stand-alone districts. Additional reduction of

caseload may be allowed when documentation of necessity for travel time exceeding 20 percent of available work hours is provided.

(3) Aide support for itinerant resource teachers is not subject to the same caseload and contact hour requirements of non-qualifying cooperatives or stand-alone districts. (History: Sec. 20-7-457, 20-7-458, MCA; IMP, 20-7-458, MCA; NEW, 1990 MAR p. 1252, Eff. 6/29/90.)

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